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1901-10-02
House of Representatives.
Mr. Speaker
took the chair at 2.30' p.m., and read prayers.
QUESTION
FIFTH VICTORIAN CONTINGENT
Mr FOWLER
asked the Minister for Defencesupon notice -
Whether he will communicate with the Imperial authorities with a view to ascertaining -
Whether one or more privates of the Fifth Victorian Contingent in South Africa have been sentenced to be shot for mutiny, the said sentence' being; afterwards commuted to twelve years penal servitude ?
Whether it is correct that the brigadier in command made use, on several occasions, of language of an insulting character towards the members of the contingent?
Whether the use of such language is not subversive of "discipline, and calculated to produce mutiny ?
Whether officers guilty of conduct calculated to produce mutiny are punishable under military regulations ?
' Whether, if the answers to Nos. 2, 3, and 4 are in the affirmative, an inquiry has been or will be made into the conduct of the brigadier in command of the Fifth Victorian Contingent, and at the same time reconsideration given to the sentences imposed on the mutineers ?
Whether, apart altogether from the foregoing considerations, and in view of the serious aspersions which are reported as having been made by the brigadier in command of the Fifth Victorian Contingent against the efficiency and honour of these Australian troops, the Minister of Defence will make representations to the Imperial authorities as to the necessity of giving the members of this contingent an opportunity of disproving the said charges by transfering them to the command of another officer ?
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Minister for Defence
Sir JOHN FORREST
- In reply to the honorable member's question, I beg to state -
No information has been received by the Defence department in regard to these very regrettable matters, except that which appeared in the press reports. I have to-day addressed a minute to the Prime Munster, asking him to move His Excellency the Governor-General to obtain from the Imperial authorities full information on the whole matter. When that information is received, should any steps be found necessary, further action will be taken.
PROPERTY FOR PUBLIC PURPOSES ACQUISITION BILL
Second Reading
Debate resumed (from 1st October, vide page 5405), on motion by Sir William Lyne -
That this Bill be now read a second time.
Mr GLYNN
- I thought last night that this was too important a Bill for one to speak upon from first impressions, and I therefore asked for an adjournment of the debate, so that I might look into it more carefully. It seems to deal with two classes of property - with property hereafter to be acquired and with property passing under the Constitution. As regards property hereafter to be acquired, the power to acquire seems to be given under subsection (31) of section 51 of the Constitution Act, which says -
The acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws. The only condition imposed by that subsection is that the terms of acquisition must be just, and, in my opinion, the provisions of the Bill are not altogether within the powers conferred by it. Take for instance, clause 10, which makes provision for the purchasing of land for underground works, and states that unless the surface be injured by the construction of those works, no compensation shall be paid to the State or persons from whom the land is acquired. I question if that clause could stand the test of an action in a court of justice. The provision, of course, is one which could have been passed by a Parliament such as the Parliaments of the various States before Federation ; but our powers on the subject are limited by the sub-section to which I have just drawn attention, which

requires that the acquisition must be upon just terms. I put it to the House that to acquire a portion of a man's land, although we do not take the surface, without paying him compensation for it, is not just. In some cases, at all events, the privilege taken must have a value. That being so, there is no doubt that clause 10 is ultravires. I can scarcely see the object of putting the clause into the Bill.
Sir William Lyne
- Land may have to be taken for the purpose of carrying on underground works in connexion with the telegraphic and telephonic services of the Commonwealth.
Mr GLYNN
- I had forgotten for the moment that the carrying on of those services has been vested in the Commonwealth.
Mr V L SOLOMON
- Are not all the necessary powers provided for in the Post and Telegraph Bill ?
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Mr GLYNN
- Yes ; but extensions may be necessary, for which, I presume, the provisions of the clause would be required. A man is, however, entitled to receive compensation for any portion of his land that is . acquired, whether the surface be taken or not, the principle being that a man's proprietary rights in land extend to the utmost depths. I put it to the Minister, therefore, that there is more than a doubt whether the clause would stand the test of an action in a court of justice if it were challenged by any person in respect to whose property it was proposed to exercise this power. Two modes of acquisition are provided for in the Bill - the voluntary and the compulsory mode. It seems to me that Division] of Part 2, which provides for voluntary acquisition, is somewhat cumbersome, is not required, and therefore might be struck out. Division 2 of Part 2 provides a pretty quick -mode of compulsory acquisition, which may take place without consulting the owner, or even giving him notice, the Commonwealth acquiring the fee-simple of land; by the mere publication of a notice in the Government Gazette of its intention to resume. If it is not a condition precedent to compulsory acquisition that the Commonwealth must try to enter into an agreement with the owner - and the Bill does not make it so - it seems to me that the more facile method of acquisition provided in Division 2 is the only one which should be retained. One reason that makes me suggest the desirability of striking out Division 1 is that its provisions are somewhat technical, and might lead to litigation. Division 2 brings about the complete extinction of all proprietary rights in, and of all charges upon, property by a. mere notification in the Government Gazette. I think that that is a good method to adopt. It gets rid of all questions of title, and as to who should convey, and it throws the responsibility on the court of apportioning the purchase money amongst the persons interested, either in possession or in remainder. The provisions of Division 1, however, "would enable a person who had the slightest interest in a property to barter away the interests of all others in it by a mere agreement with the Government. For instance, a tenant for life aged 78 could, under clause 4, enter into a contract with the Government to sell, not only his own life interest, which would, of course, be of exceedingly small value, but all interests in remainder - in fact, the fee-simple. Unless under the compulsion of sheer necessity, I do not think we should retain provisions which would allow of such a contingency as that occurring. Such provisions are not necessary, because, under the compulsory provisions of Division 2, the notification in the Government Gazette is to operate as a conveyance of the land, and the adjustment of rights between the various parties having estates in possession or in remainder, or otherwise interested in it, can be equitably made by agreement with the court under subsequent provisions. In clause 8, power is taken to compulsorily acquire land > which has been dedicated under a State Act to some public purpose ; but I fail to see why such power should be taken. Why should the interests of the Commonwealth be paramount to the interest of the public of a State in a matter of that sort ? Under that clause, the Commonwealth could acquire a pleasure ground or park land dedicated to the public under a State Act.
Mr V L SOLOMON
- Surely the Bill does not go so far as that.
Mr GLYNN
- Yes, it does. The park lands which surround Adelaide have been dedicated under a State Act, but this clause gives power to the Commonwealth to acquire them, notwithstanding such dedication. The matter is one which requires much consideration, and the proposal should not receive acquiescence until a little

more justification is shown for it.
Sir John Forrest
- Such land might be required for defence purposes, for instance.
Mr GLYNN
- No doubt there are purposes for which it might be desirable to take even park lands.
Mr V L SOLOMON
- Would educational grants come under the clause ?
Mr GLYNN
- I think so. The clause says -
Any
dedication or reservation of the land made under the authority of any State Act.
As regards the method of ascertaining the value of land compulsorily acquired, I submit - of course, subject to correction - that the method proposed is a wrong one. The provisions of the Bill are somewhat intricate, so that they are a bit confusing, even upon a second perusal, but the method proposed seems to be this : Each person owning an interest is entitled to separate consideration in the matter of compensation. Instead of valuing the land as they generally do in the States, and afterwards getting a Judge - in default of an agreement - to apportion the purchase money amongst the various owners' interests, what is done here is to provide that each owner shall be dealt with separately as to the value of his interest, and by summing up the whole of these separate interests the total value to be paid is arrived at. In default of an agreement with the Minister, an estimate is made of the value of each life interest and of each interest in remainder, and from the total of these interests the Judge has to determine the price to be paid. That is not a correct method of dealing with the property to be acquired, but the proper way is to value the land, and leave it open - if there is no agreement - for the State court or for the High Court to adjust or divide the price of the land equitably amongst the persons interested prior to purchase.
An Honorable Member. - Or by arbitration.
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Mr GLYNN
- The value might be settled by arbitration, but I am dealing with the relative values of the interests of the persons having had estates in the property, and I say that the persons interested should get the value of their respective interests out of the total money paid for the property, and not according to the principle of the Bill, which seems to be to estimate the value of each interest, and by adding these up to ascertain the price to be paid. That is not the usual method, nor do I see on what ground of expediency the Minister can insist upon it. Last night attention was drawn to the fact that this Bill gives recourse only to the High Court of Australia, and I really cannot understand how it is that provisions of this sort have found their way into almost every
Bill that has been submitted, to us - into, I for instance, the Post and Telegraph Bill.
Mr Higgins
- Recourse ought to be had to the Supreme Courts.
Mr GLYNN
- Yes ; recourse ought to be given to the High Court or to a court exercising federal jurisdiction, which would really he the State Supreme Courts. The provision in this Bill involves an extreme degree of centralization, because a man in Western Australia, whose property was taken from him, would be dragged to the High Court of Justice in New South Wales, not only to have the land valued, but to have, it maybe, his petty interest determined. I do not know really whether this is a case of the draftsman slipping into loose verbiage, or whether the provision has been made in accordance with the policy of the Ministry. In either case it is, at the very least, reprehensible that the Bill should have been framed in its present form. Now, the most important provisions of this Bill are contained in clauses 44 and 45, and 1 should like to say a few words regarding them, although the Prime Minister has declared that these clauses will not be finally settled until the conference of the Premiers of the various States and the Prime Minister, or whatever Federal Minister represents the Commonwealth, has taken place. There is, no doubt, a great deal of misapprehension as to the effect of these clauses, and a great deal of interest is being taken in the various States in finding out what will be their probable operation. As regards both clauses 44 and 45, I might say that the Constitution requires that before this Bill was introduced - I will put it almost as

strongly as that - the Government should have endeavoured to come to an agreement with the various States as to values.
Sir William Lyne
- Why before the Bill was introduced ?
Mr GLYNN
- Because we cannot legislate before we have done that, and it seems to me that the Prime Minister called the Premiers of the different States together, not as an act of grace, but as a matter of necessity.
Mr Deakin
- There was no necessity whatever.
Mr GLYNN
- Very well. Let us see. Section 85 of the Constitution provides, under sub-section (1), for the taking over of property used exclusively in connexion with the department, and this property is of two classes - namely, property used exclusively and permanently by the Commonwealth, and property used exclusively and temporarily. I do not know how the Ministry provides for estimating the value of property used temporarily by the Commonwealth. The class of property that is referred to is, I suppose, border Custom-houses that will be no longer used after Inter-State free-trade is established - to the best of my recollection that was the reason why the provision was inserted in the Constitution. There is no means of estimating the value of these properties at present, but there is a clause in the Bill which provides that the State interested in such property shall take the steps necessary to claim compensation within 90 days after the acquisition by the Commonwealth on the passing of the Act. Under these circumstances it will not be possible to wait until the introduction of free-trade before a valuation is placed upon the property.
Mr Deakin
- Power is given to extend the period.
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Mr GLYNN
- Yes ; but clear cases of necessity ought to be provided for explicitly in the Bill. The permission given to the High Court to extend the time is intended to cover unforeseen contingencies, but when we can foresee what is likely to happen, we ought to provide for such cases in the Bill - otherwise it is a case of bad draftsmanship. The Bill does not contain any provision as to how the value of properties not permanently required is to be assessed. The other class of property that passes under the Constitution, or that may be 'acquired under the Constitution - is any property of the States used, but not exclusively used, in connexion with a department ; and it is provided in section 85, sub-section (2), of the Constitution that the value thereof shall, if no agreement can be made, be ascertained in as nearly as may be the manner in which the value of land or of an interest in land taken by the State for public purposes is ascertained under the law of the State in force at the establishment of the Commonwealth. The Bill does not comply with the conditions of that subsection (2). That sub-section seems to clearly require that before we can resort to the State method of ascertaining the value of the land - the Bill does not provide for, but rather abolishes, the State method, which is the only method the Constitution gives us - we must try to enter into an agreement with the State, which is the owner, from which the land is taken over. It is the same with property passing under sub-section (1). That is a condition precedent to legislation, and our power is contingent upon it. Under sub-section (3) of section 85 of the Constitution, it is provided -
The Commonwealth shall compensate the State for the value of any property passing to the Commonwealth under this section ; if no agreement can be made as to the mode of compensation, it shall be determined under laws to be made by the Parliament.
Sir William Lyne
- The provisions in the first part of the Bill to which the honorable and learned member has objected contemplate arrangements being made without going to the court.
Mr GLYNN
- The Minister is wrong. The provisions in the first portion of the Bill are not applicable to property passed or acquired under section 85 of the Constitution. Property so passing or acquired under the Constitution cannot be the subject of voluntary acquisition or bargaining between the parties under the first division of Part 2 of the Bill. In regard to property that is passed under the Constitution, 'for which sub-sections (1) and (3) of section 88 provide, all that is to be done is to estimate the value and the mode of

compensation. The Constitution clearly lays down in sub-section (2) of section 85 that the Commonwealth may acquire any property of the State of any kind, used, but not exclusively used, in connexion with a department; but a condition precedent to legislation as to the mode of compensation, or the method of ascertaining the value, is that an effort shall be made to come to an agreement with the States.
Mr McCay
- The honorable and learned member means that recourse shall be had to the method provided for in the section, after an attempt to come to an agreement has failed.
Mr GLYNN
- That is how I read the sub-section, and my opinion is that the Ministry have been driven into this conference with the Premiers as a matter of constitutional necessity.
Sir William Lyne
- The honorable and learned member is quite wrong.
Mr GLYNN
- Perhaps I am wrong; but the matter struck me in that way last night when the Minister was speaking, and I think I am right.
Mr Higgins
- The honorable and learned member's colleague, Mr.Y. L. Solomon, objects to the conference.
Mr GLYNN
- No. The point taken by that honorable member was that an effort to enter into an agreement as to the method of valuation ought to have been made before this provision was put in the Bill ; and I think that is a very wholesome suggestion. Some of these provisions might not have been necessary if some mode of valuation and compensation had been agreed upon between the Commonwealth and the State Governments. Clause 47 provides that the provisions of the Bill as regards land acquired under the Bill are, generally speaking, to apply to land which is passed under or has been acquired under section 85 of the Constitution. That is the effect of the two sub-clauses of clause 47. Sub-clause (2) provides -
Where any property of a State, of any kind, used but not exclusively used in connexion with any department of the State transferred to the Commonwealth, has, either before or after the commencement of this Act, been acquired by the Commonwealth under sub-section (2) of section 85 of the Constitution, the provisions of this Act relating to claims for compensation, the payment of compensation, and the mode of such payment, should, subject to the Constitution, be deemed to extend and shall be applied as nearly as may be to such property.
I think that provision is ultra vires. The mode provided by the Constitution under section 85, sub-clause (2), for ascertaining the value is " as nearly as may be " the method adopted in the States.
Mr Higgins
- I had a note of that, too.
Mr GLYNN
- I am glad that the honorable and learned member agrees with me, as his concurrence removes any doubt I might have had. The method prescribed there is to allow the State law to operate as to the determination of the value. That method varies. In some States arbitration is provided for, whilst in others recourse is at once had to the court. In this Bill provision is made not for the method mentioned in the Constitution, and the words in the Bill, clause 47, sub-clause (2), providing that the value shall be ascertained in as nearly as may be the method of the Bill, have no validity. The effect of this is to entirely upset the Constitution.
Mr Deakin
- That will not be the effect.
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Mr GLYNN
- The effect can only be gathered from the provisions in the Bill and the intentions of the Ministry as therein apparent. I say that the principle of subclause (2) of clause 47 of the Bill is the opposite of the principle of sub-section (2) of section 85 of the Constitution, and I think that the honorable and learned, member for Northern Melbourne, if he looks into the matter, as he seems to have done fairly closely, will agree with me on that point. Clauses 44 and. 45 are those upon which the greatest degree of public anxiety exists. Now, with regard to clause 44, I am. very glad the Ministry have adopted the suggestion

which I made under almost hopeless circumstances in the Convention. I remember tabling a motion at the Melbourne session almost in the terms of this subclause. The present Prime Minister agreed with me, or at least said that it was a subject worthy of consideration, and called upon the Treasurers of the various States to express their opinions. The two State Treasurers who spoke - one of whom was the present Federal Treasurer - gave their opinions against the motion. The suggestion which I made to take over an equivalent in debt to the value of the properties transferred was negatived in the Convention without division. I am glad that, on the principle that time gives wisdom even to Ministers, they have adopted the suggestion which met with so little acceptance from the Treasurers in that Convention.The method which I suggested could have been accomplished then, but I doubt whether we can constitutionally pass clause 44 now. I will quote from what I said in the Convention -

The suggestion I make, therefore, is that we should amalgamate the purchase moneys up to the lowest amount, which is that of Tasmania, and pay the balance of the valuation money either in cash or by taking over a proportionate amount of the State debts.

That suggestion amounted to this : that we could, owing to the States amalgamating their assets, have pooled an amount up to the lowest valuation - which was that of Tasmania - and thus have wiped out a total of something like £1,500,000, and the balance could have been dealt with by taking over an equivalent of the public debts of the States. The first suggestion, as to the striking off of an amount equal to the lowest valuation - namely, that of Tasmania - cannot be carried out now. I question whether we can. even take over the debts, however politic it maybe to do so, as against the liabilities of the States. Section 105 of the Constitution evidently does not help us. That section provides for the Federal Parliament taking over the debts either altogether or per head of the population. The principle of this Bill is not to take over the debts per head of the population. But there is no other power in the Constitution to take over the debts, nor is there without the consent of the States any provision that entitles this Parliament to declare that the acceptance of a State liability is to be equivalent to payment. That is a matter of agreement with the States but we are putting it into this Bill as if we had the absolute power to put it there. The right of compelling the States to transfer a portion of their liability in lieu of the price does not exist. We have the power only to take over without State consent the debts altogether on to take them over per head of the population. However, the method proposed undoubtedly is a good one, and probably may be the solution hit upon by an agreement with the Premiers of the various States. Notwithstanding the opinions which have been expressed against clause 45, on the ground that it is unconstitutional, I say with a certain amount of deference - because much abler men than myself Have taken an opposite view of the matter - that that clause, so far at all events as the grounds of objections hitherto urged against it are concerned, is constitutional. There is one flaw in it not hitherto mentioned which I will point out, and which I think can be overcome only by consent of the States. So far as the main objections which have been urged against it are concerned, I shall have to differ from them;

Mr Higgins

- Is it not a provisional set-off?

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Mr GLYNN

- The question is, " Can we do it?" This is challenged by the press and the representatives of some States on the grounds, not only that it is unconstitutional, but that it is a bad method of doing it. I do not agree with that argument. I rather support the Ministry. If honorable members will look at sub-section (2) of section 89 of the Constitution Act they will find it provided that -

The Commonwealth shall debit to each State -

The expenditure therein of the Commonwealth incurred solely for the maintenance or continuance, as at the time of transfer, of any department transferred from the State to the Commonwealth.

The "other expenditure" is, under "C," to be apportioned to the States per head of their population. I do not care about the pedantry of State unity, or anything else. We have to deal now with the provisions of the Constitution as they are. There is no distinction there between capital outlay and outlay that is merely annual. There is no distinction made between outlay for public works and outlay for the current services of -the Government. In England both classes -of expenditure are put in the annual budget. Honorable members will have noticed that this year the annual expenditure approximated £200,000,000, a considerable proportion of which was made up of the accidental expenditure and paid out r of revenue of

the year. Of course, the loan moneys are subsequently taken out and appropriated to loan funds, but out of one f-und all appropriations are made. That is the principle of the Constitution, because under section 81 provision is made that -

All revenues or moneys raised or received by the Executive Government of the Commonwealth shall form one consolidated revenue fund, &c.

Mr Higgins

- Will not all capital outlay be apportioned under sub-section (b) of section 89 of the Constitution 1

Mr GLYNN

- It can be so apportioned according to population. But the States seem to imagine that if they pay the debt for which they are liable under " C " now they are paying more than if they do it eventually. That is the source of all the dissent from this clause. If the States do not pay it now they will ultimately have to pay it per head of the population, unless the method is under clause 93 of the Constitution changed to some other than a per capita one.

Mr Higgins

- They want to move the burden on to their children.

Mr GLYNN

- That is a very bad principle. Under sub-section (2) of section 93 of the Constitution it is declared that -

Subject to the last sub-section, the Commonwealth shall credit revenue, debit expenditure, and pay balances to the several States, as prescribed for the period preceding the imposition of uniform duties of customs.

But that is " until Parliament otherwise provides," which may be ten years hence.

Mr Deakin

- " It may be for years, or it may be for ever."

Mr GLYNN

- Exactly. It may be done, or it may never be done, but Parliament can, ten or fifteen years hence, if it wishes, adopt another than a per capita method of apportioning expenditure. Then we shall have reached that degree of unification resting upon which so many have landed themselves in a wrong position. They imagine that we have reached that position now, but we have not. At the present time the method of apportioning " other expenditure " is absolutely prescribed by the Constitution for five years after uniform duties have been imposed, and afterwards unless we see fit to alter it. I therefore think that it is constitutional to do what the Ministry are doing so far as capital outlay is concerned. But there is one matter that weakens my first opinion that the clause was in all respects constitutional.

Mr Higgins

- What can that be ?

Mr GLYNN

- We have, as I said, the power of apportioning all capital expenditure per head.

Mr V L SOLOMON

- Under what section of the Constitution 1

Mr GLYNN

- Under section 89. " Other expenditure " includes everything.

Mr V L SOLOMON

- Supposing we purchased the Northern Territory for £3,000,000 sterling, would it include that expenditure ?

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Mr GLYNN

- Undoubtedly, if the States could stand it. The position is that we should never cast it upon or debit it in the monthly balances, because it would be impossible to so pay it. Supposing that we purchased properties to the value of £10,500,000, we should not as a matter of expediency, though we have the technical power, cast that expenditure upon the monthly balances. How could we get the money that way 1 We should have to overtax the people. But because we are not likely to do it, people think that we cannot do it under exceptional circumstances. The exceptional circumstances a re here, because, if we are entitled to do that, we can treat money payable to the States as if it were revenue raised under the Constitution'. That is the point upon which I have a slight doubt. I have no doubt that we can apportion

both capital and annual expenditure - expenditure for public works as well as for current services - per head of the population, but I do doubt whether we can treat money due to the States as if it were money raised by the federation, because it is only from that that we can make our deduction, under clause 89, and pay over the surplus.

Mr V L SOLOMON

- Do not the transferred departments come under the terms " Maintenance and continuance," under sub-section («) of section 89 of the Constitution % I mean interest upon the purchase money 1

Mr GLYNN

- No. I think the interest on the purchase money will have to be apportioned among the particular States, but not debited to particular States as part of the cost of maintenance. The interest in relation to new loans will have to be paid per head of the population by the various States as "Other expenditure." The interest on loans in connexion with the departments is not an outlay contemplated under sub-clause (2) (a). It is an outlay which comes under sub-clause (2) (c) as being " other expenditure." The interest upon moneys invested in the State properties is not expenditure for "maintenance or continuance " within the meaning of the Constitution. That expenditure is not earmarked. The money is treated in the States as public money, and is applied to various works, but the amount of money spent upon those works is not apportioned to the particular works, and debited as a charge upon those works. The security of our credit is not our works, but our total solvency. Interest is paid out of consolidated revenue, and is not paid out of the proceeds of particular properties. Some States no doubt have apportioned, for the purpose of estimating whether departments pay or not, the loan moneys which have been spent on those particular departments.

Mr Chapman

- They do that upon the railways.

Mr GLYNN

- Yes, they do that upon the railways for the purpose of estimating whether they pay or not. But the expenditure here is not " for maintenance or continuance." It is other expenditure so far as the Constitution is concerned.

Mr Higgins

- The honorable and learned member says that it is one thing for the Commonwealth to apportion expenditure and another thing to provide means by loans for meeting the expenditure.

Mr GLYNN

- Undoubtedly.

Mr Higgins

- The expenditure of £3,000,000 for purchasing the Northern Territory would have for the particular year in which it occurred to be distributed per head of the population amongst the other States.

Mr GLYNN

- Strictly speaking, it would ; but as a matter of fact we could not deal with it in that way. The money being large would have to be borrowed, and the interest would have to be paid per head of the population of all the States, and ultimately also the principal. We could not do that except under exceptional circumstances in our present position, where we are unable - the Government say we are, but I have a doubt as to that - to deal with credits due to the States for purchase money of their properties as if it were revenue. We could technically throw the whole obligation on a monthly balance, assuming we are able to treat the purchase: money as revenue raised, but I do not think we can constitutionally do that. Section S9 does not justify that, sub-section 1 of that section providing that until the imposition of uniform duties of customs, the Commonwealth shall credit to each State the revenues collected therein. How can we call purchase money due in respect-, of properties revenue?

Mr Higgins

- The money goes into revenue.

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Mr GLYNN

- It is not revenue paid by or collected in a State. We receive revenue from the States, and after taking off certain debits, we pay back the balance to the States. What we are doing in the Bill is to declare that the credits due to the States are held by the Federation as if they were revenue raised in the States ; and,

therefore, the surplus over what is required under sub-sections (2) and (3) has to be paid back to the various States. We cannot treat this as revenue, because it is not revenue ; and if that be so, we cannot put it as a set off in any way under the Bill. In the case of South Australia, for instance, we cannot, if we adopt the valuations for the sake of argument, say to that State, " We receive from you in revenue the value of your transferred properties, namely, £1,665,000, and we shall debit you with your share, per head, of the "other expenditure," which is £1,041,000, and we shall, therefore,, pay you for the property by giving you in cash £624,000." Here is a point that is; overlooked - the release from any liability in respect of the balance. It is said by some people that the States hand over their assets and retain their debts, getting nothing for the assets. But I think that is utterly fallacious, and the argument will not bear careful examination. We cannot treat this £1,665,000 as if it were revenue received to be dealt with under section 89. It is not revenue, and that is the weak spot in applying the undoubted power of apportioning all expenditure per capita amongst the States. The honorable and learned member for Parkes, says in effect, as has been said very often, that we are taking over the assets and not assuming any of the liabilities under clause 45. To take a concrete example, I say that if we pay South Australia £624,000 in cash, and there is a release from the undoubted liability under clause 89 to pay £1,041,000--

Mr V L SOLOMON

- We make South Australia contribute afterwards.

Mr GLYNN

- How do we make South Australia contribute ?

Mr V L SOLOMON

- Under clause 45.

Mr GLYNN

- South Australia is not made to contribute ; she is, under the Constitution, liable, on the assumed valuation, per head of the population for £1,041,000.

Sir William Lyne

- South Australia under those figures was to receive.

Mr GLYNN

- All the States are dealt fairly with, so far as present conditions are concerned. As regards South Australia, the people of that State would be jolly fools if they did not apply the principle at once. If the South Australian population, as probably will be the case, is proportionate to the other States greater hereafter, then her contribution per head, under section 89 of the Constitution, will be much greater.

Sir Wiiliam Lyne

- But suppose the proportion of population goes the other way ?

Mr GLYNN

- Then, of course, we shall be in a better position.

Mr BRUCE SMITH

- A worse position.

Mr V L SOLOMON

- But if the other States increase in greater ratio ?

Mr GLYNN

- We are talking of South Australia. The honorable and learned member for Parkes has New South Wales in his mind, and if that State increases in population at a greater ratio than the other States, and we apply the per capita principle, New South Wales will be in a worse position.

Mr BRUCE SMITH

- Surely it is not a question as to how it will affect individual States. If the principle is right, it must apply to all the States.

Mr GLYNN

- I am arguing from a certain point of view, and referring to South Australia as an illustration. I say that the South Australian people will be fools not to adopt the principle now, because the terms are very good. I do not say that the terms are better than for New South Wales, but in South Australia they have a cash surplus.

Mr BRUCE SMITH

- It is a question of law.

Mr GLYNN
- Surely the honorable and learned member does not do me the discredit of saying I have not dealt with the question from the point of view of law and constitutional rights. 1 am merely incidentally referring to South Australia, and I am trying to influence local opinion, which at present seems against me on this point. The Parliament and press of South Australia take a different view.
Mr Chapman
- Why should we always be press ridden?
Mr GLYNN
- Surely the honorable member does not accuse me of being press ridden ; those more familiar with bending to the press may answer the question.
Mr Higgins
- Does the honorable and learned member take the revenue referred to in section 89 as meaning revenue from taxation - customs and excise?
Mr GLYNN
- Revenue, however raised.
Mr Higgins
- It does not include all receipts, but simply revenue from taxation.
Mr GLYNN
- For instance, all receipts by the Commonwealth that can be retained by the Commonwealth, or has to be paid to the States will be revenue, but all receipts by the Commonwealth cannot be pure Commonwealth revenue, because the Commonwealth receives a portion as trustee for the States. The Commonwealth, for example, collects all Customs revenue, but it cannot retain the whole, three-fourths being held in trust for the States. We cannot however describe a credit due to the States as purchase moneys of property as received by the Commonwealth, and collected in the States, but that is what clause 45 does. It regards a sum payable for properties of the States, as if it were received under section 89 ; and I say that is wrong.
Mr V L SOLOMON
- While approving of the system, the honorable and learned member says that it is utterly wrong.
Mr GLYNN
- I am merely pointing out the difficulties of legal interpretation, and not referring to policy, and do not speak dogmatically.
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Mr V L SOLOMON
- The honorable member says that as a matter of policy it is right, but that from a legal stand-point it is wrong.
Mr GLYNN
- As a matter of policy, it has been objected to as bad. I think it is as policy a very good solution of the difficulty. It is a mistaken policy, for instance, to borrow money to pay the States. I am pointing out what I consider difficulties in applying the clauses. I prefer what is, perhaps, the best method - that is taking over the equivalent of the States debts. There are constitutional difficulties, but if it can be done, I am bound to support that course, having seen no reason to change my opinion as expressed in the Convention. The other is a good method also, because we might at once, with the exceptional means at our disposal, discharge an obligation which otherwise we should have to shift on to those who come after us. Under clause 93, unless another method of meeting the expenditure than a per capita distribution can be found, those States who now refuse to pay will ultimately have to pay on the very same principle. Whether that will be on better or worse terms depends on the fluctuations of population. These are considerations which have struck me on a second perusal of the Bill since yesterday, and which certainly justify me in giving the methods, suggested by clauses 44 and 45, at least favourable consideration.
Mr BRUCE SMITH
- I have no doubt that the interest in this measure will ultimately centre upon clauses 44 and 45. I understand that the Minister has consented to allow those two clauses to go over for the present.
Sir William Lyne
- No ; only clause 45.

Mr BRUCE SMITH
- Whether the Minister has so consented or not, I do not think that any honorable member who wishes to deal comprehensively with this measure can fail, or should fail, to deal primarily with that aspect of the Bill. Looking at the Bill as a whole, with a considerable practical knowledge of 'the Acts in existence in the mother State in regard to the acquisition of property - I refer to the Public Works Act, and the Land for Public Purposes Acquisition Act - I can see clearly that this measure runs very much on the lines of those measures. I am bound to say that experience in the mother State has shown that the general principle on which those Acts have been based is a very good one. The principle effects a very good result with regard to the owners of land, and, on the whole, has worked well.
But there are some points in this Bill in regard to which experience has produced a great deal of difference of opinion; and I should like, before dealing with clauses 44 and 45, to draw the attention of the Minister in charge of the Bill to certain of those points. I should like first to direct his attention to the question of costs. That is generally the last question considered in proceedings of any kind, but it comes first in order of my notes taken according to the rotation of the clauses. I do not mention New South Wales merely because I wish to refer to the law as it obtains in that State as final and conclusive, but because I wish to point out that, with regard to costs, there have been there two methods of dealing with them. According to clause 16, if a claimant recovers from the State an amount equal to or greater than that which he claimed, he is entitled to costs against the Crown. But, on the other hand, if he obtains a less amount than he claims, the Crown has a right to costs against him. That principle was observed in one of the New South Wales Acts for some years, but in the later Act an alteration has been made. It was found that so long as a claimant was guaranteed that he would be awarded costs against the Crown, if he only recovered as much as or more than he had claimed, there was a direct incentive to go to law instead of arriving at some friendly understanding with the Government. The provision as to costs was afterwards altered, so that when a claimant makes an exorbitant claim against the Government, he is dealt with very much as a person is dealt with in respect of legal costs. If he does not recover within a certain proportion of what he claims, he is mulcted in costs by the Crown ; and that is a very fair provision. If a man has a claim against the Government for property which is really worth, say, £1,000, it may be to his interest, under this Bill, to make a claim for £3,000. All he has to consider is whether, when he ultimately goes before a jury or arbitrators, he can recover £1,000. The later Act of New South Wales provides that if a man claims £3,000, and he does not recover within one-sixth or five-sixths - or at any rate a certain proportion of that amount - he is mulcted in costs by the Crown. That is, as I have said, a very fair provision, because it deters claimants from making exorbitant demands. Where a property is worth £1,000, and the owner claims £3,000 as compensation for it, while the valuation of the Crown is £750, the difference between what is claimed and what is offered is so great that it is almost impossible for the parties to Gome together ; but experience shows that where the claimant knows that the recovery of costs from the Crown depends upon his obtaining a certain proportion of the amount claimed for compensation, he will review his claim more carefully before putting it in, because the recovery of costs is often a very important factor in the proceedings. I suggest to the Minister that he should consider the propriety of applying that principle here, It will be a check upon exorbitant claims, and will not affect the probability of justice being done between the parties.
Sir William Lyne
- I do not think that the proportion in New South Wales is as large as five-sixths.
Mr Higgins
- The proportion of one sixth applies where a client taxes his solicitor's bill.
Mr BRUCE SMITH
- No doubt I had that proportion running in my mind. All legal members know that, with regard to the taxing of costs, if a deduction of more than one-sixth is made from the original bill, the attorney whose bill it is must pay the cost of taxation, whereas, if he recovers more than five-sixths of the amount claimed, he obtains costs from the other side. There is another aspect of this question, upon which, I think, the experience of New South Wales is valuable. Clauses 13 and 14 set out the principle upon which valuations shall be made. That principle was not laid down in the first Property Acquisition Act passed in New South Wales, but experience showed that very often, where part of a property was taken, the public

work for which it was resumed increased the value of the remaining land by, in some cases, a greater amount than the value of the resumed area. For instance, if a man owned 10 acres of land, and 1 acre was acquired for the purposes of railway construction, it was often found that the value of the remaining 9 acres was increased by the construction of the railway to an amount larger than the value of the acre that was taken from him. Under the old state of the law, however, he was allowed to retain the added value of the 9 acres, and at the same time to obtain compensation for the 1 acre of which he had been dispossessed. The later Act provided that when the valuation of the land taken over was being made, the arbitrators or the jury - because in some cases the question went before arbitrators first, and if either party was dissatisfied by their award, then before a jury - should have the right, where the added value of the land which was left was as great as, or greater than, the value of the land taken, to deduct the added value from the compensation which was due though not so as to make the claimant a debtor.

Mr Piesse

- That is the application of the betterment principle.

Mr Higgins

- Yes, and the same thing is provided for in clause 17 of the Bill.

Mr BRUCE SMITH

- I did not see that provision. I should now like to direct the attention of the Minister to clauses 13 and 14, which provide the periods within which the different stages of a claim shall be made. Clause 13 says that - Within 00 days after the receipt of every such notice of claim by the Attorney-General he shall forward the same, together with his report thereon, to the Minister, who shall thereupon - "Thereupon" is a very vague word - if no prima, facie case for compensation has been disclosed, cause a valuation of the land. Although the claimant is under an obligation to put in his claim within 60 days after the receipt of the notice from the Crown, and, under clause 14, must, after the Minister has notified him that his claim is disputed, do something else within 90 days, the provision regarding the action of the Minister is left vague. The clause says he shall " thereupon." I have known cases in New South Wales where, the time within which the Minister shall perform his part of the transaction not being defined, the claimant has had to apply to a Judge of the Supreme Court for a mandamus to compel the Minister to act. That is not desirable. The New South Wales Act, too, contains the provision that after the 90 days, or after the 60 days have expired, either party, may obtain an extension of time by permission of a Judge of the Supreme Court. That is a very desirable provision.

Mr Glynn

- A similar provision is contained in the Bill.

Sir William Lyne

- What does " thereupon " mean t

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Mr BRUCE SMITH

- According to some interpretations, it would mean " immediately," and according to others, " as soon as practicable," which introduces the question as to how fast the department can deal with matters of this kind. When an application for a mandamus to compel the Minister to perform his part of the transaction was being made, I have known it to be argued that " thereupon " meant "as soon as practicable," and that as the department was congested with business of a similar character it was impossible for the matter to be dealt with immediately. I come now to clauses 44 and 45, which constitute the crux of the Bill, and in regard to which, if passed, there is likely to be a great deal of discussion if not of litigation between the States and the Commonwealth. Every business man must be struck with the fact that if this Bill is going to do what is generally supposed - to allow the Commonwealth first of all to acquire the property of the States, and then, if no value can be agreed upon, to make some sort of settlement in which it calls upon the States to contribute towards the purchase - it will give rise to a great deal of unpleasantness between the States and the Commonwealth. I am aware that it is claimed by the Ministry - and I believe that the claim was put forward in the Senate rather forcibly by the Minister in charge of Government business there - that under the Constitution the Commonwealth has power to call upon the States to contribute in some way or other towards the capital purchase money of whatever properties are taken over. Whether the Commonwealth has or has not that power is a question which, unless the States, through their various Parliaments, agree to forego their rights, will ultimately come before the High Court. I did not hear

the Minister who is in charge of the BUI address the House upon this question. I have read the report of his speech which has appeared in the press, but such reports are necessarily so condensed that it is impossible to ascertain exactly the views of the Minister on the finer points at issue. I understand, however, that it was contended that, under section 89 of the Constitution, the Commonwealth is empowered to call upon the States to contribute per capita in some way or other towards the purchase of properties taken over by the Commonwealth. That opens up a very large question. The first thought it suggested to my mind was this - that if the Commonwealth was invested under the Constitution with the power of taking
State property, and instead of paying outright for it, either by cash or by federal stock, or by taking over part of the State debts, was allowed to call upon the States to contribute towards the purchase of their own property, great difficulties will arise. The logical outcome of such a construction would be that it would be possible for the Commonwealth to take without compensation a very large amount of property from the States which has been purchased with money borrowed by the States, and by the borrowing of which their national debts had been proportionately increased, without compensating them. The States would have to continue to bear the burden of the debts they have incurred in respect to that property : and the Commonwealth would have complete control over it. Meanwhile the bond-holders would have to see the States denuded of the security upon which they had relied in advancing their money, without the responsibility for those debts being taken over by the Commonwealth.
Sir William Lyne
- Will not the bondholders be just as secure if the Commonwealth guarantees the debts of the States %
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Mr BRUCE SMITH
- No doubt; but we are now considering the first of a series of transactions in which the Commonwealth and the States will be involved, and which may to some extent be regarded as a precedent by which the Commonwealth forces the States to contribute to the purchase of their own property. Of course, a precedent in fact does not make a precedent in law ; and, although it might be passed over on one occasion by the States, and no action taken in the High Court, the legal right would be preserved in the States to question it at any future time. It is important to look very closely into these transactions at this stage, and to do it without party feeling or unnecessary warmth. I take it that, unless the Federal Government wish to come into possession, by some circuitous method, of a larger proportion of the revenue than they would be entitled to in the ordinary way - and I do not for a moment think they do - they must be as anxious to have these matters settled amicably between the States and the Commonwealth as any private member can be. Without coming immediately to close quarters with the legal aspect of the question, it appears to me at the very first glance that if the Commonwealth can take property from the States, and, under this 45th clause, tell the States that although they are thus taking it from them, and although they acknowledge their obligation to pay for it, they are going to compel the States to contribute towards the capital sum out of which they make their payment, it will amount to nothing more nor less than the appropriation of State property by the Commonwealth. If the Commonwealth pays for the property, but at the same time requires the States to contribute per capita towards that payment, there is only one logical conclusion to be drawn from the transaction, and that is that the Commonwealth acquires the property without taking upon itself the debt attaching to it. The effect of this will be that the public of Great Britain - from whom I suppose we have derived most of our loan money - who have advanced money upon State debentures, under the supposition that the State would continue to hold their railways and public buildings, and wharfs, and other real property as security for the debt, -will see - to the extent of the property taken - the assets upon which they relied gradually passing away from the States to the Commonwealth ; and as the Commonwealth will not take over part of the obligations commensurate with these assets, the national debts of the States will remain in the same position as before. The most businesslike suggestion that occurs to my mind is this : that if the Commonwealth is going to acquire these properties the Commonwealth should pay for them - not pay for them in name merely, but pay for them in fact, so that the States can to that extent reduce their national debts. If a State like New South Wales has a debt of £60,000,000 or £70,000,000 and property of a like value, and the Commonwealth takes over property worth £5,000,000, it is a perfectly business-like expectation that £5,000,000 should be handed over to the State to enable it to proportionately reduce its debt.

Mr Piesse
- Will the States have to pay the interest?
Mr BRUCE SMITH
- With regard to the interest, I am prepared to show that it stands on a different footing altogether, and that if the States are going to receive, from year to year, the net proceeds of these transferred departments, the charge for interest on the capital outlay is a very legitimate debit against them as long as the bookkeeping system exists. As long as the Braddon clauses exist, or what is known as the bookkeeping system is in operation, that will be perfectly fair ; but by-and-by, when the Commonwealth takes this revenue for itself, and the obligation to hand back three-quarters of the revenue under the present system of bookkeeping is at an end, the Commonwealth should pay the interest on the public buildings, which form the corpus out of which it makes its revenue.
Mr Piesse
- It only makes a difference as to the balances between the States.
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Mr BRUCE SMITH
- It makes a great difference. I want to make it quite clear, that so far as my mind is concerned, I draw a very keen distinction between the capital and the revenue involved in these transferred departments ; and, further, I am impressed very much - I suppose as a lawyer - with the necessity for recognising that the Commonwealth and the States are what we call distinct legal entities,, just as much as are two different companies, though they may consist of exactly the same shareholders and have exactly the same directors. Supposing there are two companies, A and B. The courts know nothing about the personnel of these companies, or of their shareholders, but lay it down that in doing business with one another or with third parties, they must be treated as separate individuals with separate rights and obligations - as, in fact, distinct legal entities. That seems to me, from my conversation with members of both Houses in this matter, to be the cardinal misconception at the bottom of their minds - they do not recognise that the Commonwealth and the States are separate and distinct entities. They must be looked at just as if they were two separate and distinct companies, although composed of the same shareholders. I would remind the Minister of a case in New South Wales, where a very large land company was very desirous of embarking upon a big hotel venture. It was discovered that under the articles of association it had no power to embark upon such an enterprise, but the directors formed a separate company for the purpose of running a large hotel, and the land company, which had no power to run an hotel of its own - I am speaking of the Australian Hotel Company, of Sydney, which was on a very large scale, the original capital being £300,000 - purchased nearly the whole of the shares in the hotel company. When one of the shareholders in the Land Company {iffterwards found that the hotel company had not been a success, he tried to throw the responsibility of this alleged breach of the articles of association upon the directors, but the -court said that although it was true that the articles did not empower the directors to start on hotel, they could buy shares in an hotel company, though consisting of the -same shareholders, and of the same directors. The Supreme Court held that although the two companies consisted of practically the same individuals they were separate legal entities and must be looked -upon as such, quite apart from the individuals who constituted them.
Sir William Lyne
- Would the honorable and learned member advocate that the Commonwealth should go into the money market and borrow £10,000,000 and then hand it over to the States?
Mr BRUCE SMITH
- I certainly should, rather than that they should not pay for what they take. I think that the Commonwealth will ultimately have to borrow money, and it is immaterial what the amount may be if it receives value for the money. How does the Minister expect the Commonwealth to take over the railways of all the States, at a valuation of probably £100,000,000, without paying money over to the States to enable them to reduce their debts?
Mr Knox
- If the States are not paid for the assets which are taken over they will be placed at a great disadvantage, because they will have debts in excess of their real liability.
Mr BRUCE SMITH

- I am glad that the honorable member endorses the view I take. If, by-and-by, under this Constitution, the Commonwealth and the States agree upon a transaction as to the State railways, it must be at once seen that the Commonwealth will have to raise a very large sum of money - something like £100,000,000- in order to pay the States for the assets which they take over. W'e all know that without the railway assets the debt of New South Wales, for instance, which I understand has reached the very respectable figure of £70,000,000, would be a most formidable incubus for that State, because its railways, which now give a return of 3 per cent, and upwards upon a total outlay of about £40,000,000, supply a very large portion of the interest the State has to pay the English debenture holders. I take it that the only business-like way of dealing with a matter of that sort will be to issue Commonwealth debentures, and, instead of taking them to the London market and disposing of them for cash, hand them over to the States to an extent commensurate with the value of the assets transferred. Each State will then have so much Commonwealth stock bearing interest until such time as the debentures have to be realized in order to enable them to reduce their national debts to an amount corresponding with the amount to which their assets have been disposed of.

Sir William Lyne

- That would really be making an arrangement between the Commonwealth and the States - that would not mean going to the English money market to float a loan.

Mr BRUCE SMITH

- There would be no real difference as far as that is concerned, because a debenture is really only an I.O.U. When a State borrows a million of money in the London market it merely gives pieces of paper undertaking to pay back the money in 20 or 30 years, as the case may be, and to pay interest at a certain rate during the currency of the loan. It does not matter whether these I.O.U's. are given to the public for cash, or whether they are given, like bank notes, to the State to compensate it for whatever assets the Commonwealth has taken over. But if we are going to conduct Commonwealth affairs on business lines, we shall have to recognise that the States and the Commonwealth a16 distinct legal entities, and that the accounts should be kept between them as if they were two separate individuals. In New South Wales each department is managed on that principle, and so far has that system been carried, that in order to ascertain what stamps are used for postage and what for revenue purposes distinct stamps are used for postage and duty purposes respectively.

Mr Watson

- That became necessary when the Commonwealth took over the Post-office.

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Mr BRUCE SMITH

- It does not matter when it was done ; the distinction was made for bookkeeping purposes. Honorable members know that the Commonwealth members in travelling to the different States require to have the services of the railways, and the Minister for Home

Affairs might say to the commissioners - "What does it matter ; do not let us have an account for these railway passes - we are all the same people, and it will be all the same 100 years hence - let us travel for nothing." The Railway Commissioners, however, would say - " No, we are expected to manage our railways on commercial principles, and, therefore, if we carry the members of the Commonwealth Parliament, we require to be compensated just as if they were private individuals. We admit that it does not matter in the end, but in the meantime we want to keep our accounts correct." Exactly the same principle will have to be adopted in the future with regard to the Commonwealth : and if the Commonwealth wishes to take the Post-offices over from the States, it should pay the States outright, or by issuing debentures to the required amount, so that, if the State likes, it may reduce its national debt by an amount corresponding with the value of the estate transferred. Some people say that this will be a very dangerous thing for the States, if they happen to have Ministers in power who are reckless in their expenditure, because the money which ought to be devoted to the reduction of the national debt may be expended on railways or other works, perhaps not of a permanent character. We, however, have nothing to do with that - that is a matter entirely for the States - and if the people of the States choose to allow their Ministers to use the capital which has been returned to them for assets transferred to the Commonwealth, that is their concern, and not ours, except as citizens of our particular State. We are here as representatives of the different States, it is true, but we are managing the Commonwealth, and what

we have to insure is that any transaction between the States and the Commonwealth is conducted on just and business lines. When we have seen that the Commonwealth has fulfilled its obligations to the States, it is for the Parliaments of the States to see that the money coming to their respective Treasuries is properly used - that is not part of our functions as Members of the Federal Parliament. The question is, has the Constitution given power to the Commonwealth to require from the States a contribution, per capita, towards its capital expenditure,? I understand the Government rely on section 89 of the Constitution, and I hope the House will bear with me while 1 give them my interpretation of that section which, I think, is the right one. First of all, 1 would point out that section 85 of the Constitution says : -
When any department of the public service of a State is transferred to the Commonwealth -
. All property of the State, of any kind, used exclusively in connexion with the department, shall become vested in the Commonwealth.
That is a very simple provision. It merely declares that the property shall become vested in the Commonwealth. Then it says -
The Commonwealth may acquire amy property of the State, of any kind, used, but not exclusively used, in connexion with the department ; the value thereof shall, if no agreement can be made, be ascertained in, as nearly as may be, the manner in which the value of land, or of an interest in land, taken by the State for public purposes, is ascertained under the law of the State in force at the establishment of the Commonwealth.
I ask honorable members to consider this matter for a moment. " The Commonwealth shall compensate the State for the value of any property passing to it under this provision. If no agreement can be made as to the mode of compensation " - not as to whether or not there shall be compensation - " the matter is to be determined under laws to be made by the Parliament." If it were ever intended by the Constitution that the Commonwealth should be able to call upon the States to contribute, percapitatowards the capital cost of these buildings, what possible necessity was there for the insertion of these provisions for ascertaining the value of the properties and the amount of compensation to be paid ? "If the property is worth only £10,000; then if we are going to set up a contra account and compel the States to contribute, per capita, to the capital cost, it would not matter if we gave them all round ten times its value. In such circumstances it was a waste of time to have embodied these provisions in the Constitution, because their purpose could only be to ascertain to what amount the States are to be compensated by the Commonwealth.
Mr Higgins
- Is the value of the property acquired to be ascertained by a State law and the mode of compensation to be determined by the Commonwealth law ?
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Mr BRUCE SMITH
- That is not the point with which I am dealing, though I agree that that is so. I am not desirous of becoming didactic upon this matter. I am merely thinking aloud, and I desire to put before the House the thoughts which occur to me in regard to this particular provision, which seems to me to clearly travel beyond the powers conferred by the Constitution. Legislate as we like, we shall not be able to lessen the powers of the States or increase those of the Commonwealth under the Constitution. Although Ministers representing the various States may decide upon a certain course ; if the States agree to do something contrary to and beyond the Constitution, it will still be within the right of any citizen of a State to bring the Commonwealth legislation before the Federal Court, and to ask the Court to determine whether such legislation is or is not ultra vires. I do not consider that any Minister for a State could .agree to putting the transaction between the States and the Commonwealth in any other form than that provided for by the Constitution. What is the purpose of this clause for determining the valuation of property if the Commonwealth has power to levy upon the different States a per capita contribution of that identical capital cost ? It would not matter whether the amount involved in the purchase money were £10,000 or £10,000,000. It is just like playing cards with counters, and giving the counters a £10 value instead of a £1 value. It would not matter whether the assets of the States are valued at £1,000,000 or £1,000 if we compel all the States to contribute, per capita, towards the cost of their acquisition. Unless we suppose that this clause, therefore, has been inserted for no purpose whatever, ' the House cannot come to the conclusion that the Commonwealth has power to do what is herein provided. Section 89 of the Constitution brings us to closer quarters with this matter.

Sir William Lyne
- How does the honorable and learned member reconcile subsections (2) and (3) of section 85 1
Mr BRUCE SMITH
- Sub-section (2) of section So states -
The Commonwealth may acquire any property of the State of any kind used, but not exclusively used, in connexion with the department.
That is merely matter of description.
Sir William Lyne
- It is not a matter of description, because there are certain properties which are not exclusively used in connexion with a department.
Mr BRUCE SMITH
- This sub-section applies only to those properties which would come under the definition which it contains.
Sub-section (1) deals with property which is exclusively used. Sub-section (2) refers to property which is used, but not exclusively used, in connexion with a department. It goes on to provide how, if no agreement can be made, the properties shall be valued. But we have the distinct and positive provision in the Constitution that the Commonwealth "shall compensate the States for the value of any property passing to the Commonwealth " under this section. To require the money to be repaid by the States would not be compensation for but appropriation of their property.
Mr L E GROOM
- Is that an agreement between the State Parliament and the Parliament of the Commonwealth ?
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Mr BRUCE SMITH
- My interpretation is that the State would have to act through its Parliament and not through a Minister. Otherwise it would be possible to have a Minister of the Crown in one of the States consenting to an arrangement which was ultra vires of the Constitution. We know very well that every citizen of the Commonwealth can demand his rights under the Constitution, just as recently in America we saw that Congress passed an Income Tax Bill in such a form that a single citizen took the matter into the Supreme Court, with the result that the provisions of that Bill were held to be ultravires, and therefore mere waste paper. Tn the same way, I take it, that where the Constitution provides that a certain arrangement must be made between a State and the Commonwealth, it would have to be made by the State qua State, and not by any individual Minister. Obviously it was never intended that a Minister of the Crown of any particular State should be able to bind all its citizens to an agreement which was ultra vires of the Constitution itself. Sub-section (3) of section 85 provides that -
The Commonwealth shall compensate the State for the value of any property passing to the Commonwealth under this section ; if no agreement can be made as to the mode of compensation, it shall be determined under laws to be made by the Parliament.
I entirely agree with the honorable and learned member for South Australia, Mr. Glynn, when he said that it is a condition precedent of any Commonwealth law providing a method for settling this question that there shall have been a disagreement between the State and the Commonwealth. The Commonwealth cannot legislate without such a disagreement as if there had been a disagreement, and afterwards act as if the condition precedent had been fulfilled. If the Bill provided that in the event of the State and the Commonwealth not agreeing, it should be within the power of the Ministry or of the Commonwealth to adopt a certain course as a method of settling the dispute between the parties, then, so soon as the agreement came into existence, this Act would operate. But if this Bill were passed in an unconditional form, without that hypothesis as a preface to it, I think the Court would hold that it anticipated a disagreement. A very serious difficulty would thus be raised, owing to the want of form of the Act. There is nothing in the three paragraphs of section 85 of the Constitution to which I have referred authorising the Commonwealth to call upon the States to contribute per capita towards the purchase money. They simply lay it down unconditionally that the Commonwealth shall compensate the State ; and if no agreement can be made they provide the means by which the amount of compensation shall be determined.
Mr Higgins
- Do I understand that Ministers contend that they can not only deduct from what is to come to a State,

but can compel the State to pay ?
Mr BRUCE SMITH
- They contend that out of the money to come to a State, namely, the three-fourths of its revenue, they may deduct a per capita contribution towards the capital sum required for purchasing any property. They say to the States "We owe you a certain sum of money, namely, your three-fourths, of Customs revenue. You now owe us your contribution per capita towards the capital purchase money of certain property. Therefore, we are not going to hand over to you the whole of the revenue to which you are entitled." Of course they have money in hand, but the right to set off assumes an existing debt, and the Commonwealth has first-of all to establish the fact that there is a debt.
Mr Higgins
- Ministers do not go so far as to contend that if the balance were against a State, the Commonwealth could compel that State to pay ?
Mr BRUCE SMITH
- I think not. This Bill provides that the sum shall not | in the case of any State exceed the amount] of compensation payable to that State. It ' is not intended to claim any more. It would I indeed be an interesting state of things if the Commonwealth made the States give up their assets, and then said: - " We will compel you to give us something further to pay for another State's assets."
Mr Higgins
- The Commonwealth has admittedly taken over a bigger thing than property. It has taken over the Customs and Excise.
Mr BRUCE SMITH
- Certainly. It has, to use a business phrase, "an unlimited uncalled capital." It has the power to call to an unlimited extent upon the citizens of the Commonwealth - even though they are paying money as citizens of the various States - in order to pay for the properties which are taken over. If the Commonwealth takes over these properties, it cannot say - "We have no money to pay for them." It has been given unlimited powers of taxation in order to raise money if it wants it for this purpose. But it does not need to exercise those powers. No Commonwealth Government would be justified in raising money by direct taxation to pay for capital expenditure. It is almost an axiom of political finance that where- a State is spending money on a permanent asset it is justified in borrowing money for that purpose.
Mr Higgins
- I do not think that all will agree with the honorable and learned member as to that axiom.
Mr BRUCE SMITH
- The axiom is sound enough if the asset is a permanent one.; but it is very open to question how far loan moneys should be spent upon such perishable works as wooden bridges. I want to impress on the honorable member in charge of the Bill that if he or the Government have any doubt as to how they will ultimately pay for these assets which they are taking over - and this is an element in' the conclusion they have arrived at - then it is not a logical element. They have unlimited power of taxing directly, and they have unlimited power to borrow, so far as the world will lend, on their debentures and bonds.
Sir William Lyne
- What as to interest?
Mr BRUCE SMITH
- Interest really comes under section 89.
Mr CROUCH
- The honorable and learned member has not shown in what section the amount of compensation, is provided for.
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Mr BRUCE SMITH
- The amount of compensation is to be arrived at in the same way as is done in the case of land under sub-section (2).
Mr Crouch
- That only refers to property not exclusively used, and I am speaking of property which is exclusively used.
Mr BRUCE SMITH

- I hope the honorable and learned member will not throw on me the burden of solving every conundrum that arises under the Constitution. I confess that for the moment I cannot point to the section, beyond saying that sub-section (3) clearly provides that the Commonwealth shall compensate a State for the value of any property passing to the Commonwealth " under this section " - not merely under this sub-section, or previous sub-sections.

Mr Crouch

- Who determines the amount ?

Mr BRUCE SMITH

- I cannot tell the honorable member. It seems to me that the provision in sub-section (2), as to " property used but not exclusively used," has not been applied in sub-section (1), which deals with property exclusively used.

Mr.Piesse. - Sub-section (3) says that the amount shall be determined under laws to be made by the Parliament.

Mr BRUCE SMITH

- The sub-section does not say that, but merely that the Commonwealth "shall compensate" the State for the value of any property passing to the Commonwealth " under this section." There is the general and unconditional provision " shall compensate," and that " if no agreement can be made as to the mode of compensation " - that is, as to the manner or method - " it (the manner or method) shall be determined under laws " - that is, as to the mode of compensation - "to be made by the Parliament." That mode, method, or manner is a very legitimate purpose in the Bill now before the House ; but the right to determine mode of compensation will not get rid of the liability. The section does not say that the Parliament shall determine whether they will pay or not, but that the Parliament shall determine only as to how they will pay. The mode is proposed in clause 44 of this Bill, which is an attempt to carry out the purpose of sub-section (3) of section 85 of the Constitution. Clause 44 provides : -

The compensation payable to a State in respect of any land acquired under this Act may, at the option of the Governor-General, be paid in any one or more of the following modes : -

Honorable members will see that the word "mode" is very properly repeated. The clause continues :

That is to say : -

By payment to the State of the amount of such compensation ; or

By the Commonwealth becoming responsible to the State for its liability for principal and interest, in respect, of such a part of the public debt of the State, as is the actuarial equivalent of a3/12 per cent, loan of the same currency and of the amount of such compensation.

There is no power provided in the Bill for the Commonwealth handing over its debentures or stock to that equivalent. That might well be added as a further alternative. I now pass for a moment to section 89 of the Constitution, under which, I take it, the Government contend that they have power of compelling contributions. Section 89 is founded on what I may call a bookkeeping state of mind. It provides that until the imposition of uniform duties the Commonwealth shall credit to each State "the revenues collected therein by the Commonwealth." I take it that this means the whole of the revenues which come to the Commonwealth during the period to which the section applies, whether from Customs or Post-office.

Mr Higgins

- From loans?

Mr BRUCE SMITH

- No; I should not call loans revenue.

Mr Higgins

- Loan moneys all go into the revenue.

Mr BRUCE SMITH

- I do not agree with the honorable and learned member, because I do not think loans were contemplated under this section.

Mr Higgins

- Quite so ; but when we speak of consolidated revenue we know that all loan moneys go into that revenue.

Mr BRUCE SMITH

- I do not call loans part of the revenue of the country.

Mr Higgins
- They ought not to be, but they are.
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Mr BRUCE SMITH
- All the money may go into one account, just as we may put all our money into one pocket, though it may belong to two or three different persons. ' But in keeping our accounts we do not lump them in that way, and the honorable and learned member for Northern Melbourne knows what would be the result if a trustee put the revenue of two or three different estates into one banking account, from which he also drew his own private expenditure. Such a trustee would very soon be taught his duty by an Equity Judge. Sub-section (1) of section 89 of the Constitution says -
The Commonwealth shall credit to each State the revenues collected therein by the Commonwealth.
Mr V L SOLOMON
- "Collected therein" - That cannot possibly mean the proceeds of Commonwealth ?
Mr BRUCE SMITH
- The word "therein" would be a complete answer to the suggestion made by the honorable and learned member for Northern Melbourne. A loan to the Commonwealth certainly could not be called revenue collected "in" the State, and, therefore, sub-section (1), it seems to me, applies to revenues which are collected in the different States, and that will be credited to the individual States. Subsection (2) of section89 provides that the Commonwealth shall debit to each State against that revenue, first - " The expenditure therein of the Commonwealth." That is the expenditure in the State of the Commonwealth - incurred solely for the maintenance or continuance, as to the time of the transfer of any department transferred from the State to the Commonwealth.
My opinion is that only one interpretation can be placed on the words " incurred solely for the maintenance or continuance." It is not the establishment of these departments that they can debit the cost of, but the cost of maintenance or continuance. Sub-section (2) proceeds -
The proportion of the State, according to the number of its people, in the other expenditure of the Commonwealth.
Every legal member of the House knows that where a court is putting an interpretation on a document- in which there is a series of expenditures or receipts specified, or a series of articles, for that matter - and there is a general termination, such as "any other," the principle of ejusdem generis applies. The court will say that everything included in the general phrase which follows the specific list must be of the same kind or character. I have no doubt whatever that if the Federal Court were called upon to interpret this sub-section, it would say that this "other expenditure" must be of the same character as that which is enumerated under the different heads of the same section. But if the Government are under the impression - and I believe that is the case - that because they have power in this sub-section to charge the "other expenditure" of the Commonwealth to the States, they are entitled to charge a per capita proportion of all their future capital expenditure to the different States, I say that is a total misconception of the meaning of the clause.
Mr Piesse
- That is the intention.
Mr BRUCE SMITH
- That is the intention and belief. But this section deals with a mere debit and credit proposal in regard to the so-called Braddon clauses. It is a proposal that, first of all, the States shall be credited with all revenues collected in each State by the Commonwealth, and then shall be debited the expenditure "for maintenance or continuance." These are comprehensive words in the sense that they will cover, in my opinion, the interest necessary in order to keep these departments going. That is to say, if the Commonwealth has, out of its own loan moneys, purchased the Post-offices, it would be perfectly entitled to say to a State - " If we credit you with the revenue which comes to you through these Custom-houses or Post-offices, we are entitled to debit you with the annual cost of the interest for the maintenance or continuance of those institutions."
Mr Higgins
- With the interest on the cost of the buildings?
Mr BRUCE SMITH

- I think so; I say it is an element. If a man were manager of a business, and had to account to the owner of the shop, he would credit the owner with all the profits of the business, and debit him, amongst other charges, with the rent of the establishment, which rent is analogous to interest, or, if the property were mortgaged, and the manager were accounting to his principal in another country, he would credit the latter with all the profits, and debit him with the interest on the mortgage as a legitimate debit in the business. In my opinion, therefore, so long as the States are credited by the Commonwealth with the revenue which is produced by those transferred departments, the Commonwealth has a perfect right to debit the States on the other side of the account with interest on the capital expended.
Mr V L SOLOMON
- On the other hand, the State would be relieved of the interest on the amount of the debt taken over.
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Mr BRUCE SMITH
- That would be so. The Commonwealth would pay the States the interest on their stock given as compensation for the property taken and debit it, or would give credit for it put of the moneys received as revenues on behalf of the States. Although the States would have given up their bonds or their debentures to pay for the capital value of these properties, they would not be the interest out of pocket. The Commonwealth would have to recognise their obligation from year to year, and pay the interest, and they would be able to take credit for the interest paid on behalf of the States.
Mr Higgins
- Interest on maintenance ?
Mr BRUCE SMITH
- It may not itself be " maintenance," but it is current expenditure, and, therefore, part of the maintenance or continuance. I Have no doubt these two words are intended to comprehend all current expenditure made in order to get the revenue. We do not spend capital and interest in order to get revenue ; if we spend capital we do not spend interest - we cannot charge both. Therefore it is intended that the interest shall be chargeable as part of the current expenditure of the Commonwealth business in order to produce revenue.
Sir William Lyne
- The business could not be carried on without buildings.
Mr BRUCE SMITH
- I know ; but on that account we would not charge capital value and interest into the bargain. During the continuance of the bookkeeping system interest may be charged, but the property remains the Commonwealth property. When the bookkeeping system comes to an end the Commonwealth will have a right to say - " We have the buildings ; you have our debentures." After the bookkeeping system the Commonwealth will take for itself the revenue of all these departments.
Mr V L SOLOMON
- The transfer will include not only the buildings used as post-offices, but also the whole of the telegraph wires.
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Mr BRUCE SMITH
- I take the whole thing as a going concern which has to be maintained and continued, just as I would a shipping company with wharfs and loading and discharging gear. I speak of buildings because that seems a clear and more concise way of dealing with the matter. This is my point - that during the bookkeeping system, under which the Common wealth Has to account to the States" for. the revenue received, the Commonwealth is perfectly entitled to charge interest on the value of the property, just as a man conducting business for another would charge interest on the mortgage on the building in which he carried on the business. It is, of course, quite open to the Commonwealth to make an arrangement under which it may say to the States - "We shall not pay you at present for the buildings, because you are going to derive revenue from them." But as soon as the bookkeeping system comes to an end, the Commonwealth will take over the buildings in such a way as to take over the revenue, and the Commonwealth may arrange that it shall then and not till then compensate the States. Or the Commonwealth might say - " We shall give you stock against the interest we have to pay, and we shall debit the revenue with a corresponding amount as part of the current expenditure of the business." I

altogether deny the right of the Commonwealth, under section 89 of the Constitution, to charge the States with their proportional cost per capita of the capital cost of the properties taken over. Apart from the legal aspect of the question, the arrangement proposed would have this startling effect - that the Commonwealth takes from the States assets upon which their debenture holders relied in advancing them money. People outside the Commonwealth do not know that the Commonwealth has not also the power, without arrangement with the States, to take over the railways ; and if they suppose that there is an arbitrary power in the Commonwealth to take over all State assets, as it proposes to take over these, they might very well become seriously alarmed at the prospect of the States being left with all their obligations, but with no assets to represent them. This is undoubtedly a tedious question, but it is one which every member of the House, if he does his duty, must investigate. I think that we should exercise very great care before we pass a measure of this kind, which, we may depend upon it, will only drag the States and the Commonwealth into the federal courts to determine how far the course that Has been proposed is justified by the provisions of the Constitution. For my own part, after having given the matter very careful consideration, and with all respect for the opinions of the Attorney-General and the honorable and learned member for South Australia, Mr. Glynn, I think the framer of the Bill Has wholly misconceived the powers conferred by the Constitution, and that, so far as it provides that the Commonwealth may debit or deduct as a set-off from moneys going to the States a per capita proportion of its capital expenditure, the measure is ult/ra vires.

Mr KNOX

- I feel that the honorable and learned member for Parkes and the honorable and learned member for South Australia, Mr. Glynn, have dealt so exhaustively with this important subject that much of what I might say would be mere repetition, and that I wish to avoid. Quite apart from the legal aspect of the rights and obligations which may exist under the Constitution, there is an ordinary business view of the matter which one may be permitted to take. I hold the opinion that the High Court must have a case stated to it for the determination of this dispute. The initial commonsense view to which I wish to refer is this : It has been stated by the honorable and learned member for Parkes that the Commonwealth and the States must be regarded in their negotiations and their payments as distinctly separate bodies, and, therefore, sis has been pointed out, if the Commonwealth becomes possessed of the securities of the States, and does not recoup them, their enormous indebtedness will cease to be represented by their assets. In my opinion, the question must resolve itself into one of compromise, and the proper step has been taken in arranging for a conference. In the main, I take the view which has been stated by the honorable and learned member for Parkes. But, while we are arguing so much as to what are the rights of the States, I would point out that the Bill comes to us from a body created for the protection of State interests. The Senate debated it very fully, and agreed to send it on to this House, which is more concerned with the rights of the Commonwealth and the interests of individual citizens than with the rights of the States.

Mr V L SOLOMON

- The members of the Senate are not absolutely infallible.

Mr KNOX

- But that body was specially created for the protection of State rights, and they have sent the Bill to us with their approval. That is one of the reasons which induced me to give my support to the measure, believing as I do that in committee some amendments will be moved which will commend themselves to the Attorney-General, and will bring its provisions more into accordance with the desires of all parties.

Mr Poynton

- In the Senate honorable members fought very hard for the recommittal of the main provisions of the Bill.

Mr KNOX

- I think that a schedule of the properties which have been taken over by the Commonwealth - differentiating the properties of each State - might very well have been placed before the House. We have at present no official information on this subject, and such information would be very serviceable to us in ascertaining the distinction between the State contributions as a State and its contributions per head of population. If the omission can be in any way repaired, I am sure honorable members will consider it an advantage to have the information. I look to the conference which is contemplated as likely to provide a solution of what is at the present time a rather troublesome matter. If I were a member of another place, I

should certainly consider that under the provisions of the Bill the States would be placed at great disadvantage.
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Mr WILKS
- The concluding words of the last speaker voice my opinion. I am afraid that under the Bill the States will be placed at a disadvantage. The Commonwealth Ministry have seen that we have a most difficult problem before us, and to allay any suspicion or doubt in the minds of the citizens of the States they have provided for a conference between the State Premiers and the Commonwealth Premier for the purpose of obtaining a harmonious agreement. I think, however, that it would have been wiser to delay the introduction of this measure into this Chamber until that conference had taken place, so that the House could deal immediately with whatever agreement was arrived at. As the Constitution provides in most unmistakable terms that compensation must be paid, I think that it would be wiser to clear up accounts by paying directly for transferred property. I cannot understand the legal stand-point, and the more it is presented te us the more intricate it appears to be. But I ask the Government to take a common every-day view of the position. I do not think that the Commonwealth is anxious to steal a march upon the States ; but there is a good deal of suspicion and unrest in regard to these proposals. The Vice-President of the Executive Council, for instance, stated that the value of the property transferred from the control of the New
South Wales Government was £3,200,000, and the citizens of New South Wales naturally consider that their State should receive compensation to that amount. But they are told that, not only will that property be acquired by the Commonwealth without compensation, but that, in addition, the State must pay the Commonwealth £588,000. It seems to me that an easier way out of the difficulty would be for the Commonwealth Ministry to say - " We will compensate you to the amount decided upon by arbitration as the value of the property transferred, and take into account any set-off later on." The honorable and learned member for Parkes, who has occupied in New South Wales a high position in regard to matters of public finance and commercial enterprise, and possesses great legal experience, says that there is danger of a disagreement between the States and the Commonwealth which will result in appeals to the High Court. I do not think any member of this House - even the members of the Ministry - are desirous that the Commonwealth and the States should wrangle before the Federal Court. Another point upon which the public mind is a good deal exercised is the statement made by the Prime Minister that the Commonwealth can sue but cannot be sued, and these two matters taken together have given rise to a feeling of grave unrest, not only in New South Wales, but in all the States. I do not say that the Commonwealth should borrow ten millions of money and pay it over to the States, but an arrangement might be made under which federal bonds would be accepted in payment of the federal liability. I feel sure that the Ministers themselves are not clear as to the position of affairs, because if they were they would make a definite announcement upon the subject, and would not have invited the Premiers of the States to consult with them in the way they have done. We should not be called upon to consider this Bill at this stage, in view of the consultation that is about to take place between the State Premiers and the Federal Prime Minister, and in view of disagreements which may result.. The interpretations placed upon the provisions of the Bill by the Senate are not of a very definite character, and before we consider the important matters it deals with it would be well for us to await the result of the consultation to which I have referred. 16 (i 2
Mr Deakin
- It has been announced that there is no intention to proceed with clauses 44 and 45 until after the conference.
Mr WILKS
- We understand we are not going to deal with the vital clauses of this Bill, but the public do not understand the position, and they are afraid that wo may commit ourselves to some particular course of action which may not be in accord with the views expressed by the Premiers. We are placed in a very peculiar position and I do not know what we are to think of a Ministry which sets such small value upon its own opinions, that it has felt constrained to ask the State Premiers to consult with it. In view of the uncertainty which exists in regard to this measure, not in political circles only, but also among commercial men, in New South Wales and the other States, I think it would be in the best interests not only of this

House, but of the public, that we should allow this matter to stand over.
Sir William Lyne
- We are going to allow the only question at all in dispute to stand over.
Mr WILKS
- We know that ; but honorable members may express strong opinions with regard bo certain matters that are dealt with in the Bill, and may not be prepared to have their decisions overriden by the conclusions arrived at by the Premiers. Whatever is done, however, I hope that the Commonwealth will compensate the States to the full, according to the letter of the Constitution, for any property they may take over. It has been suggested that the States may squander the money that is paid over to them by the Commonwealth, but we have nothing to do with that. We have no power to ear-mark any money. that the States receive from us, whether it is paid in regard to these properties, or in respect to the transfer of the surplus Customs and Excise revenue. Although some of us might have liked to have had this power, we have no such authority, and we have no business to consider whether South Australia, Victoria, or New South Wales will squander any of the money returned to them. That is a matter entirely between the States and their creditors. I hope that the result of the conference will be that an amicable arrangement will be come to between the Commonwealth and the States.
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Mr PIESSE
- I am not going to express any strong opinions, but I shall endeavour to follow the very admirable course adopted by the honorable and learned member for Parkes, in discussing the very intricate matters that arise under this measure. It would appear that the Constitution has hardly provided for all the exigencies of the cases that are likely to arise. Apparently there are three methods contemplated under the Constitution in which property may be acquired. The properties which are essential to the working of the transferred departments are divided into two classes ; that is, properties used exclusively in connexion with the departments, and properties used but not exclusively. Then again, under section 51, sub-section (31), of the Constitution, power is given to acquire properties for any purpose in respect of which the Parliament has power to make laws. I have not noticed that that power has been dealt with in the speeches which have been made, because honorable members addressed themselves principally to the construction of section S5, dealing with properties in connexion wholly or in part with the transferred departments. When we come to consider the methods of" acquiring property, we find that section 85, sub-section (1), deals with property used exclusively in connexion with the department, and that sub-section (3) also deals with such property, but only to the extent of saying that the mode of compensation shall be determined under laws made by the Parliament, if no agreement has been made between the States and the Commonwealth. But as to the property used exclusively in connexion with a department, I have not been able to find out that there is any means of valuing it, or any direction as to how that property - which, of course, at present includes the largest proportion of what we are thinking of, namely, custom-houses and post-offices - is to be valued.
Mr V L SOLOMON
- Is not that a matter to be determined by laws to be made by Parliament?
Mr BRUCE SMITH
- There can be no objection to dealing with that in this Bill.
Mr PIESSE
- Perhaps not; but I would draw attention to the distinction made by the Constitution between property transferred and used exclusively by the Commonwealth, and property, under subsection (2), which is used, but not exclusively used, by the Commonwealth.
Mr BRUCE SMITH
- It looks like an accidental omission.
Mr PIESSE
- It seems singular that in regard to a portion of the properties there is a direction as to the way in which the values are to be ascertained, whilst as to the major part of the property, that exclusively used by the Commonwealth, section 85 does not refer to the method of valuation to be adopted. This raises a very great difficulty in the consideration of this measure, for, if there is no principle laid down in the Constitution with regard to these properties, it may become a question as to whether we are entitled, as only one of

the parties concerned, without the consent of the other party, to lay down the principle on which the value of these properties shall be ascertained. We are thinking aloud, to some extent, in discussing this matter, but I would press that point upon the attention of the Government, and ask them to give the committee the benefit of their opinions before the discussion closes. It may be necessary to consult the States as to the way in which these values shall be ascertained.

Mr Deakin

- With regard to all ?

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Mr PIESSE

- No ; I am speaking now only of the more important properties - those used exclusively in connexion with the departments. It may be necessary in regard to these to obtain the consent of the States, perhaps by legislation, to the method to be adopted to ascertain the values of these properties. Of course, if we can come to an agreement there will be no difficulty. This Bill only provides for alternatives if the parties fail to come to an agreement, but we are face to face with the problem as to how we are going to deal with the whole matter. Under sub-section (31) of section 51 of the Constitution, a very wide power is given for the acquisition of property, and it may have to be used in connexion with the acquirement of the land for the Federal Capital site. The sub-section to which I refer gives power to acquire property on just terms from any State or pei-son for any purpose in respect to which the Parliament has power to make laws. That gives the widest possible power to acquire any property so long as it is done on just terms. Therefore it seems that we shall have a freer hand in dealing with the large class of property which may be acquired for any purpose, for which the Commonwealth has power to make laws - a freer hand than with regard to the departmental properties. I do not know that we can discuss the question of values here, but it is necessary to lay down Some principle on which these properties shall be valued. We are entering upon considerations which attach to the principles of partnership. If all the partners bring into a partnership property of equal value, there need not be any question as to the interest to be paid. When capital is put into a partnership, it is usually provided that the partners shall receive interest on the capital sums contributed, and profit upon certain terms laid down after the interest has been allotted. The partner who brings in the larger share of capital, naturally receives the larger proportion of interest. Dealing with clause 45, it seems to me that it makes no real difference to the partners whether they receive interest on the whole sum which each partner brings in, or whether each receives only upon so much of his contribution as exceeds the lowest sum contributed by any partner. The ultimate result is precisely the same. But when it comes to the question of valuing there is a very great difficulty. Let us take, for example, a town which contains a very ornamental and expensive post-office. Another town, with an equal population, and deserving of the same postal conveniences, is probably possessed of only an ordinary, useful and well constructed building. If we are going to treat this matter from a Commonwealth stand-point, we ought to lay down the principle that these buildings shall be valued solely from a utilitarian stand-point. We are all interested in giving those postal facilities which a certain number of people may reasonably expect. But, if in one town a marble post-office has been erected, whilst in an adjacent town an ordinary brick building suffices for all requirements, why should the Commonwealth be asked to pay the excess price which the marble building represents 1

Mr Poynton

- That is very good for Tasmania.

Mr PIESSE

- We shall have to stand or fall by this principle, which is a perfectly fair one.- I do not see why we should be called upon to pay for ornamentation which has not been undertaken for Commonwealth purposes, but merely to add to the attractions of a particular locality. On the other hand I can see that it might be quite proper for one State to pay something more than its contribution in the way of kind. South Australia, for example, has constructed an overland telegraph line. I suppose that the outlay upon that line, together with other sums expended upon postal facilities, will represent a larger contribution per capita than the contributions of the other States.

Mr V L SOLOMON

- The South Australian post and telegraphs pay better than do those of any other State.

Mr PIESSE

- I was about to make a point in favour of the honorable member's own State. The cost of the buildings and conveniences transferred by South Australia to the Commonwealth may have been swelled by a large expenditure upon the overland telegraph line. It will be perfectly fair, when that becomes the property of the Commonwealth, that all the other States should contribute to the extra per capita cost of the Postal department of that State.

Mr BRUCE SMITH

- A principle of " give and take " will have to enter into the arrangement.

Mr PIESSE

- I was merely answering the objection, which I understood was being urged in some quarters, that it was not to be expected that any State should contribute more than its share of what has been already expended. But it may be that in very fairness some of the States will have to do so. Some of the States, by reason of their large area, have had to expend larger sums than others in providing postal facilities, and those facilities have been of benefit to the rest of Australia. I think we shall do well to give consideration to many of the points raised by the honorable and learned member for Parkes, which, however, can be better dealt with in committee.

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Mr POYNTON

- I have listened with considerable attention to the very able speeches delivered by the honorable and learned member for Parkes, the honorable and learned member for South Australia, Mr. Glynn, and the honorable and learned member for Tasmania, Mr. Piesse, and there is evidently a doubt in their minds as to the right of the Commonwealth to pass legislation prescribing the method adopted for the payment and valuation of properties transferred to the Commonwealth without the consent of the States. Evidently the Government are also dubious as to whether they have proceeded upon right lines in introducing this Bill, because they have recently consented to refer certain of its provisions to a conference of the State Premiers. I take it that what we have to avoid if possible is friction, and undoubtedly there is a feeling in some of the States - a feeling which I do not wish to infer is justified - that we are adopting a very high-handed procedure in connexion with this matter. Seeing that the two clauses against which the chief objections have been directed, and which form the crux of the whole Bill, are to stand over until a conference between the State Premiers and the Federal Government has been held, I fail to see that there is much advantage to be gained by discussing the measure at the present time. If the honorable and learned member for South Australia, Mr. Glynn, and the honorable and learned member for Parkes have accurately slated the case, we are in a very awkward position if we proceed with this legislation without first having ascertained the opinion of the States in regard to our proposals. I have no doubt, however, that if the suggested conference is held these knotty points will be smoothed away. There is one thing which we have to guard against in our dealings with the States. The latter entertain the idea that we are inclined to encroach upon their rights. I think it is a pity that this matter was not reconsidered in another place, seeing that the clause which has occasioned all the friction was passed hurriedly at the fag end of a sitting before it was clearly understood by honorable senators. Subsequently, when they came to look into the matter more closely, they found that this particular clause required reconsideration. An endeavour to obtain the recommittal of the Bill for the purpose of reconsidering it proved abortive, and hence the friction which has been engendered. Of course, it has been said that the Senate is the States House. It is so. But although honorable members of this House represent the States in another capacity, it does not follow that we should take advantage of any slip that has occurred in the other Chamber. I know that some honorable senators complained bitterly that they were unable to secure a recommittal of the Bill. In such circumstances, I ask - " Is it worth while proceeding with this discussion ? " The laymen of the House recognise that justice must be done to all the States. Personally I am not concerned as to' whether the payment for properties acquired by the Commonwealth is made in one particular way or another, but I do think that in the interests of the States, if we take over a certain portion of their property we ought also to take over an equivalent proportion of their debts. The effect of the clause which has provoked so much discussion in connexion with this Bill, will be most detrimental to the States when they come to borrow as States, because by one act we are taking away a certain amount of their assets in connexion with which they have borrowed money and which is represented in their national debt. Thus we are actually reducing their assets, and are then proposing upon a per capita basis to wipe out the debt.

So far as the States are concerned the debt will remain just as it was before, and it will be very difficult indeed to explain to the community at large in the States that they have been paid an equivalent for the property which the Commonwealth has acquired. I recognise that if we borrow money the States have to pay the interest upon it. But the difficulty seems to be that the States will be left saddled with the original debt, and will experience some difficulty in making it clear to the people that they have received a quid pro quo for handing over the transferred services.

Mr Deakin

- The position of the people is not altered.

Mr POYNTON

- I do not think that the position of the people is altered. I do not think that there is any justification for the feeling of unrest which exists, but we are not going to allay that unrest by pushing on with this measure. Nor can I see that there is much to be gained by discussing this Bill when it is impossible for us at the present time to arrive at finality. If I am not mistaken, the "Western Australian representative of the Government has already telegraphed to say that it is inconvenient to attend a conference at the present time.

Sir William Lyne

- The honorable member does not suppose that we are going to wait for a conference for all time.

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Mr POYNTON

- I think it would be far better to wait, at any rate for a reasonable time, than to find out afterwards that we have done something that we are not in a position to do, or, while we have the constitutional right, that we have done something to

I cause friction. We shall have to be very careful about irritating the States in connexion with our legislation.

Sir William Lyne

- Does the honorable member not think that the States should also place a little reserve on themselves?

Mr POYNTON

- I do not think the States would take any advantage of their being asked to confer, but would do so as quickly as possible ; and it would be the best thing for this Parliament and the the States if the whole matter were held over until there had been a conference. I do not speak with any authority of the legal phase of the question, but three honorable and learned members of the legal profession who are in the chamber have already taken up the position that the States will have to give their sanction. They contend that it is not the State Minister but the Parliament of the State which has to come to a settlement on the question.

Mr BRUCE SMITH

- That is, if there is something beyond the constitutional power.

Mr POYNTON

- Exactly. Surely there is no violent hurry about the acquisition of property or about coming to a settlement. If there is need for hurry, the members for the States will see that they do their part. I suggest to the Minister in charge of Home Affairs that he should not proceed any further with the Bill, because the whole of the discussion will only have to be gone over again, and we could easily proceed with other business in the meantime. It is objectionable in legislation to have a break, and to have to resume the discussion at a time when the thread has been almost forgotten. In a question like this which affects large interests of the various States, we ought not to have the discussion broken up by a conference ; it would be much better to wait until the conference has been held.

Mr G B EDWARDS

- I do not quite agree with the honorable member for South Australia, Mr. Poynton, that it is unwise to continue this discussion. I regret that the conference of Premiers, which it is now thought fit to hold, was not held prior to the introduction of the Bill in the Senate. But the Bill having gone through the Senate and come down to us for consideration, and the point having been raised that it is necessary in some respects to consult the opinions of the Premiers, it will rather assist the conference to have had this discussion, particularly in view of such speeches as that delivered by the honorable and learned member for Parkes. The Bill, so far as I have been able to master its contents, seems to be very largely a lawyers' measure. If

it had not been for clauses 44 and 45, not many, except legal members, would have entered upon a criticism of its principles.
Sir William Lyne
- The honorable member does not object to clause 44 ?
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Mr G B EDWARDS
- I do not object to that clause; the honorable gentleman misunderstands me. I mention the clauses 44 and 45 because they must be taken together ; and so far as the principles contained in the Bill are concerned, if clause 45 had been left out, I should have had no possible objection to clause 44. The latter clause provides -
The compensation payable to a State in respect of any land acquired under this Act may, at the option of the Governor-General, be paid in any one or more of the following modes, that is to say-
I do not quite understand the words " one or more," though I could have understood " one or both." The clause proceeds -
by payment to the State of the amount of such compensation ; or
by the Commonwealth becoming responsible to the State for its liability for principal and interest in respect of such a part of the public debt of the State as is the actuarial equivalent of a three-and-one-half per cent, loan of the same currency, and of the amount of such compensation.
In my opinion, any compensation for the loss of transferred property should assume the form of taking up a portion of the debt, so as to let it be definitely understood that in any transaction of the sort we are leaving the accounts, as between the creditors of Australia and Australia, precisely as they were before. But I take a view of the question which, so far as I understand, no honorable member has taken. I take the view that no compensation whatever is necessary to be paid as a mere consideration for those properties. Section 85 subsection (1) of the Constitution says -
All property of the State, of any kind, used exclusively in connexion with the department, shall be vested in the commonwealth ; but, in the case of the departments controlling Customs, excise, and bounties, for such time only as the Governor-General in Council may declare to be necessary.
There is nothing in this section with reference to compensation, either as to the mode in which it shall be paid, nor as to how we shall arrive at the value. When we come to sub-section (2), which deals with other properties not exclusively used in connexion with these departments, it is then we begin to find methods adopted for ascertaining the value, and how the compensation shall be paid. It seems to me, after looking at this matter for a long time, that the clear intention of the framers of the Constitution was that properties of the nature of post-offices, custom-houses, and railway and telegraph lines should not be compensated for at all.
Mr Glynn
- The honorable member is wrong there.
Mr G B EDWARDS
- I am stating my view.
Mr V L SOLOMON
- The honorable member was speaking of the intention of the framers of the Constitution.
Mr G B EDWARDS
- I was speaking of the intention as expressed in the Bill. Sub-section (3) of section 85 deals with how the value shall be arrived at, and it unfortunately says " under this section." The whole thing would be as clear as possible if it referred to the preceding sub-sectiononly.
Mr V L SOLOMON
- " This section " is section 85.
Mr G B EDWARDS
- I understand that ; but it seems to me that the idea was that in regard to properties which were attached to the departments taken over and exclusively in the use of those departments, compensation is not required at all. And there are many reasons for taking that view. Sub-section (4) of section 85 provides -
The Commonwealth shall, at the date of the transfer, assume the current obligations of the State in respect of the department transferred.
That is my argument. If we take over the post-offices we are to take over the obligations of the States in

respect of the postal departments. One of the obligations of the States is the debt incurred in building the post-officers and all the paraphernalia connected therewith. If we take over the responsibility attached, it will not matter a fig what value is placed on the property, because we shall assume the responsibility as one of the obligations of the department. Section 89 of the Constitution provides that the Commonwealth shall debit each State with " the expenditure therein of the Commonwealth, incurred solely for the maintenance or continuance as at the time of transfer of any department transferred."
If we have the obligation of paying interest, say, on the cost of construction of the post-offices, and also have the right, as a Commonwealth, of charging to the State that interest which we will have to pay for the maintenance and up-keep - that is, the interest - it is merely a matter of bookkeeping what we have to do. It means only two bookkeeping entries. We take the responsibility of paying the interest, and we charge the State with the interest we pay, so that there is no necessity for compensation at all.
Mr V L SOLOMON
- But the State, at the same time, is relieved of its portion of the debt.
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Mr G B EDWARDS
- That is so, because even if we do not take over the debt we take over the responsibility of paying the amount of interest which the debt represents. As a business man I say that, even if it were not provided for in the Constitution, that is a business way of looking at the matter. The honorable and learned member for Parkes said that we cannot keep these post-offices and. telegraph lines without paying interest, because if we rent them we shall have to pay the rent, and if we own them and they are mortgaged - which is precisely the condition of our large public buildings - we have a right to' charge to the States, as a contra account, the interest we pay on the mortgage. We can "take it as a matter of fact that the post-offices have been built with loan money, which bears interest. If the Commonwealth takes over properties built with loan money, we take the responsibility of paying interest as laid down by the Constitution, and consequently there is no necessity for arriving at the compensation to be paid. With regard to other properties, the Constitution is very clear that certain methods have to be adopted for ascertaining the value. I quite agree with honorable members who have argued that we can do nothing in the Bill to fix how we shall arrive at those values until there has been some failure in the arrangement between the Commonwealth and the State to arrive at a value. Until that arises, it seems to me absurd to frame clauses, except for any future transactions, regarding the value of these properties. Although I admit there is a weak point in my argument with regard to the expression "this section," it seems to me that the fact that no reference is made in sub section (1) of section 85, or the following sub-sections to any method of arriving at the value of the properties transferred with the department - the fact that there is no method mentioned right throughout the clause as to how the compensation shall be paid - and the fact that the Commonwealth has to take over the current obligations of the State in reference to the departments transferred, together with the further fact that the Commonwealth will debit each State with the expenditure necessary for keeping up the departments, all point to the conclusion that there is no necessity to arrive at the value, or to pay any compensation in respect of properties which are taken over with the departments transferred. But with regard to other properties not exclusively in the possession of the transferred departments, or any subsequent properties which the Commonwealth may desire to acquire from the States under section 51 of the Constitution--
Mr Piesse
- Section 85 does not deal with those other properties.
Mr G B EDWARDS
- But I say that in reference to section 51 we want to make in this Bill some provision for arriving at the value of further properties. In regard to transferred properties there is no difficulty whatever. No compensation is needed, and there is no necessity to trouble ourselves about the matter at all.
Mr FOWLER
- I agree with those honorable members who think that this discussion is, to a very large extent, unnecessary, in view of the position taken up by the Government in reference to the clauses we are principally concerned with. I would not have risen but for the interjection made a little while ago by the Minister in charge of the Bill, with reference to the share which Western Australia may possibly take in the forthcoming conference. I should be quite prepared to admit, if the Government had had such a proposal

before the country for some time as that at present entertained, that there would be some reason for the attitude adopted by the Minister for Home Affairs ; but, in view of the fact that the position which they now take up has practically been sprung upon the country at very short notice, I think it would be a mistake if the State of Western Australia were left out of the conference. I understood the Minister to say, however, that, if the Premier of Western
Australia could not find it convenient to attend, the conference would have to go on without him.
Sir William Lyne
- I did not say anything of the kind.
Mr BRUCE SMITH
- Did not the Minister say that he could not wait for ever %
Sir William Lyne
- I said that we could not wait for ever.
Mr FOWLER
- I do not think the Premier of Western Australia would make such a request to the Commonwealth Government. What I was going to suggest is that, if the conference is held, and the Premier of Western Australia is unable to attend, a report of the proceedings shall be submitted to him, and that he may have an opportunity of acquainting the conference with his views before a final decision is arrived at.
Sir William Lyne
- I think I saw it stated somewhere that if he could not come himself, one of his colleagues might come.
Mr FOWLER
- So long as a reasonable opportunity is given to the State of Western Australia to take a share in this important matter, I do not care what method is adopted, but I trust that due consideration will be given to that State, as well as to the other States.
Mr JOSEPH COOK
- I am one of those who think that the Commonwealth has taken a rather high-handed action in regard to this matter. It occurs to me that, as a matter of common fairness, before even these properties were taken over at all-
Sir William Lyne
- They came to the Commonwealth under the Constitution Act, and immediately upon the declaration of its existence. We could not help taking them over.
Mr JOSEPH COOK
- There was no need to take over the services of the States. The Commonwealth had the use of all the buildings necessary for the purpose of carrying on the work of the Post and Telegraph department.
Sir William Lyne
- What about the Custom-houses 1
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Mr JOSEPH COOK
- That is a small matter in comparison with the other. No difficulty would have occurred if, before the introduction of this Bill, a conference had been held and some interim arrangement made respecting the relation of the States and the Commonwealth in regard to the liabilities affecting these properties. But to take them over, and to provide for the payment of compensation without reference to the States, is, in my judgment, a most high handed procedure. I do not wonder at the States protesting against the shabby way in which they have been treated. The Commonwealth has now been in existence for more than nine months, and surely in that period there has been time to consult the States, and to ascertain their opinions upon this matter. The Attorney-General says that the Bill has been framed to provide for every contingency, but it seems to mie that its introduction before the holding of the conference is like loading a blunderbuss, and then asking the States under cover of it to consent to an amicable iarrangemei.it. That is not a British way of going to a conference.
Sir William Lyne
- The conference is to be held only to consider clause 45.
Mr JOSEPH COOK
- Clause 45 is pretty well the whole Bill. Without it we should not have much trouble with the other clauses.

Mr V L SOLOMON
- It was inserted as 4in afterthought ; it was not in the original Bill.
Mr JOSEPH COOK
- That is so. It might very well be omitted, leaving it to subsequent arrangement to make provision for modes and methods of payment. I feel that the States have a clear ground of complaint against the Commonwealth for the manner in which they have been treated. If a conference had been held, the Bill would have been passed with only a tithe of the discussion which has taken place in another quarter, and which is likely to take place here. But whatever delay and difficulty occurs must be laid at the door of the Government for their discourtesy towards- the States. I am unable - perhaps because I have not the requisite financial experience, but I am in excellent company in the view I hold - to see that this proposed airy, off-hand method of pooling the debts of the States until they have a common denominator is a fair way of disposing of the difficulty. To my mind, there is only one way of dealing with the matter fairly and justly, and that is for the Commonwealth to put itself in the same relation in regard to the properties taken over as the States formerly stood with regard to them. I think that in taking over these properties we should place ourselves in the same relation to the London creditor as the States now stand, and relieve the States of their liabilities. I hope that it will not be held later on that the acquisition of these properties is to be considered " new expenditure," but that it is part of what I might call the current obligations of the Commonwealth, existing from the time of the taking over of the departments. Surely interest charges are a current obligation.
Mr Piesse
- It has not been customary to charge interest against the departments.
Mr V L SOLOMON
- It has in some of the States.
Mr Glynn
- Only to ascertain whether certain undertakings are profitable or not.
Mr JOSEPH COOK
- I know that the interest due in respect to money borrowed for works carried out by a certain department is not ear-marked, but we must remember that the control of these departments has now been transferred to a separate entity distinct from the States. The Minister told us last night that the States sold and the Commonwealth purchased, but to make a bond-fide sale there must be a bond-fide payment. I do not see how we can call this airy method of pooling the liabilities getting rid of the hard, matter of fact liabilities of the States. In my judgment we are wasting time in dealing with the Bill before the conference has been held, and I would suggest, as the honorable and learned member for South... Australia has done, that even now it will be better to postpone its consideration, and to go on with some measure of greater urgency - say the Pacific Islands Labourers Bill. If we deal with this matter now, the whole debate will have to be repeated ad nauseam in committee, after the conference has arrived at its determination. If we proceed with this debate the case will be prejudiced before it comes to be discussed in the conference, and that will create a cloud of difficulties. It is not a right attitude to assume with regard to the States to proceed with a Bill of this kind without consulting them. We have no right to load our blunderbuss, and then ask the States if they will agree to our terms for taking over their own property.
Question resolved in the affirmative.
Bill read a second time.
In Committee :
Clause 4 (Parties under disability entitled to sell).
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Mr GLYNN
- This is a very technical clause, and I think it quires a lot of consideration. The effect of the clause is that any person seised, or possessed of, or entitled to any land or estate or interest therein, may sell and convey the same to the Commonwealth, and enter into all necessary agreements for that purpose. Now, as a matter of drafting, I might point out to the Minister that the use of the word " same " in the phrase to which I have referred has no antecedent. It does not necessarily mean land, nor does it mean interest in land. Both in this and other clauses land is one thing and interest in it is another. I would suggest that it would be better to strike out the whole of these clauses in Division 1.

Sir William Lyne
- We shall not strike them out.
Mr GLYNN
- I wish I could impress upon the Minister the fact that the second portion of this part of the Bill provides a far more easy method of acquiring property than is set out in the division we are now discussing. Under the powers proposed to be conferred in the second division of this part of the Bill, the Government may declare, merely by proclamation, that land is vested in the Commonwealth, and then adjust values and apportion the money amongst the parties interested. In the clauses which T. think should be struck out, the plan has been adopted of allowing the person with the very smallest interest to barter away the whole of the land, and such a provision is not only undesirable but is absolutely unnecessary.
Clause agreed to.
Clause 6 (Governor-General may issue notification).
Mr. HIGGINS
(Northern Melbourne).If this clause applies to the lands proposed to be appropriated for the Federal Capital site, I should like to know whether it is intended to simply acquire control over any private property that may be included within the federal area, or purchase it outright.
Mr Deakin
- This Bill is not intended to deal with the capital lands at all. Those will have to be provided for separately.
Mr HIGGINS
- Had we not better say so in the Bill ?
Mr Deakin
- Section 125 of the Constitution relating to the capital is, in a sense, complete in itself. It relates to one special area to be acquired in one special way from one special State.
Mr HIGGINS
- But if the Minister will look at clause 43 of the Bill, he will find that it is provided that, where any Crown land of a State is acquired under this Act, the State shall, subject to the Constitution, be entitled to compensation for the value thereof. I apprehend that the words " subject to the Constitution " mean that the State is to be recompensed for any Crown lands that may be taken from it, unless the Constitution provides to the contrary, as it does provide in connexion with the lands to be taken for the Federal Capital site.
Mr Deakin
- We shall make it quite clear and remove all difficulties somewhere in the Bill.
Mr HIGGINS
- The Government have made it clear in clause 43, but not in clause 6. I understood that the State was not to receive any compensation for State lands taken for the purposes of the Federal Capital site ; but clause 6 is worded in the widest general terms, and provides that the Governor-General may direct that any land required for any public purpose may be acquired from any State or person, and the words " subject to the Constitution " should be inserted there as well as in clause 43. Of course the Attorney-General will say that all Acts are subject to the Constitution, but if we are going to have the words " subject to the Constitution " in one clause, we should have them in the other also. If it is not intended that clause 6 shall relate to the Federal Capital site, the clause should have that stated on the face of it.
Mr DEAKIN
- I am inclined to agree with the honorable and learned member with regard to the last point he has mentioned. I will consider it, and at a later stage propose some form of words that will make it clear that this Bill is not to be considered as dealing with the Federal Capital site. That is dealt with in a separate section of the Constitution, and will have to be specially legislated for. I do not think it is well that our discussion on this measure should be cumbered by questions arising at every turn as to whether the provisions will affect the federal capital site.
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Mr GLYNN
- I would point out that under this clause, land may be acquired without any notice being given to the owner, and I scarcely think that would be fair. It is not obligatory on the Governor-General to notify the

owner that the land is to he taken over, or to try and enter into an agreement with him.
Mr Deakin
- That is assumed.
Mr GLYNN
- But it should be provided for in the Bill, and I think we might make these provisions alternative in the case of the failure to arrive at an agreement with the owner.
Mr Deakin
- Is it necessary 1
Mr GLYNN
- As a matter of practice I suppose it will not be necessary, but under this clause land can be acquired without making any attempt to enter into an agreement. Under sub-clause (3), unless some limit is placed upon the appropriation, any amount of land could be bought by the Executive - the Executive could bind the Federation to purchase £1,000,000 worth of property without consulting Parliament.
Mr REID
- I must strongly indorse the views expressed by the honorable member for South Australia. The matter is not one to be settled just now, but I would strongly urge the Minister to put in some provision which would limit the operation of this sub-clause in some such way as to follow the lines of some parliamentary appropriation.
Sir William Lyne
- This provision is taken from the New South Wales Act.
Mr REID
- Yes ; but I think that the Minister will find that in the New South Wales Act there are words which limit the power of the Government. The Minister will recollect that there were words in the Act which some of us thought hampered the Governor in Council when he resumed the land at Darling Harbor. We thought it was necessary that there should be an appropriation, but I think the Ministry held that an appropriation made some years previously was sufficient to meet the case. So far as my recollection serves me, the words in the New South Wales Act empower the Government to acquire land for any purposes for which Parliament has provided the funds. That gives Parliament the initiative, and the Governor in Council must act subject to the parliamentary grant.
Mr ISAACS
- The leader of the Opposition has to some extent anticipated what I was going to sa)'. We are commencing our Commonwealth career, and we are not in the position of a State that is already supplied with landed property and buildings. We are practically setting up a new house, and really these provisions appeal1 to me to give enormous powers to the-. Administration, which cannot be checked at all by Parliament. It is provided that the mere notification in the Government Gazette that the Governor-General in Council - which is the Ministry - has decided to acquire property, acts as a- statutory conveyance, and it commits the country at once today for the property, and I. think that action ought to be made provisional or tentative. The power ' given is a very large one, and we do not know what we might commit ourselves to. Parliament should be allowed to exercise its proper functions in matters of this sort. This power does not relate to small matters merely, such as sites for post-offices and so on, but many matters of enormous importance might be dealt with by the Government, acting with the very best intention, so as to commit the country to a large expenditure, which might, after discussion, be disapproved of. I do not quite see the use of putting in sub-clause (3), providing for a copy of the notification being laid before Parliament, because there will be no means of reversing the action of the Government, and the whole thing will have been made public long before. I suggest that some provision should be inserted by which the transaction shall not be considered absolutely concluded until Parliament has had an opportunity of discussing the matter.
Sir William Lyne
- But the honorable and learned member would not apply that to all small matters 1
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Mr ISAACS
- I do not know what the Minister means by "small matters." But, at all events, some limit ought to be put upon the power of the Government. I think it would be wise to afford the House some opportunity of

considering the wisdom of any compulsory purchase of property. I believe that the Government must have full power to take any property that they require for public purposes. I am not approaching the question from that stand -point at all. I merely desire to see that the country is not, from want of consideration or possibly from a miscalculation,, committed to something which it would repent of. But if this notification is once inserted in the Gazette under the terms of the present clause it constitutes a purchase, and then it only becomes a question of how much we have to pay for the property acquired.
Mr BRUCE SMITH
- I do not see anything very drastic to object to in this clause. The safeguards all come afterwards. This provision follows very much upon the lines of the Acts which exist in the mother State for the same purpose. There is no limit upon the power of the State to take whatever property it requires for some declared public purpose. Honorable members will notice that in any notification in the Gazette, the purpose for which the property is acquired has to be expressed.
Mr Higgins
- After it has been taken.
Mr BRUCE SMITH
- Yes ; but the Commonwealth will never voluntarily take up land, unless it requires it for some public purpose, and unless it has in its mind with some degree of definiteness what that purpose is. Unless that power is one of a very summary character, there is always a danger that prior to the moment at which the change of ownership takes place, the parties interested will indulge in a variety of negotiations. I have seen it done repeatedly in connexion with arbitration cases. I have been connected with a number of arbitration cases in New South Wales, where land has been resumed by the Government, and I have found that there is a singular tendency to effect sales of certain property in anticipation of the resumption by the State.
Mr Isaacs
- That does not affect what I am saying.
Mr BRUCE SMITH
- But it shows that it is very necessary to invest the Commonwealth with powers of a summary character, enabling it, without any intimation of its intentions, to suddenly resume land. Such a power will check fictitious sales which maybe made in order that the sale prices may be subsequently brought in as the actual value of the land. If the Commonwealth has power to summarily take land for public purposes, and such purposes are immediately declared in a Gazette notice, and if all provision is made for insuring that the owner receives reasonable compensation, I cannot see that any objection can be taken to the clause. Experience teaches me that it is very necessary that the power should be of a summary character.
Mr Isaacs
- There is no objection to that.
Mr. HIGGINS
(Northern Melbourne).I think the honorable and learned member for Indi has done well to call attention to this matter. At the same time, there is the other aspect of the question to which notice has been directed by the honorable and learned member for Parkes. On the one hand, we are giving a tremendous power to the Governor-General in Council. It is a power which is unlimited as regards amount, and, of course, no Parliament can refuse an appropriation of money to carry out a contract which comes within the powers conferred by Parliament. The Governor-General, therefore, can commit the Commonwealth to an immense expenditure without any warning. That is a power which has to be looked at very closely. On the other hand, the honorable and learned member for Parkes has very properly pointed out that if the Government have to give warning of their intention to resume land, all sorts of devices will be used for the purpose of inflating the price. At the time Haussmann was rebuilding Paris he adopted the practice of suddenly giving notice that he required a certain street. The idea was that he would come down without any warning upon a certain locality of closely built houses, and say - " I want that particular piece of land." By this means he thought he would be able to prevent devices of the character referred to by the honorable and learned member for Parkes. But he found that with all his care he was unable to keep his scheme secret. The very highest courtiers used to get hold of his . plans beforehand. They used to acquire the localities in which he intended to work or else they would sell the information. Then people would suddenly take up long leases of localities, and secure, as compensation for resumption, very large

sums of money.
Sir William Lyne
- That was done in New South Wales.
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Mr HIGGINS
- I am afraid there are not many tricks which they need to be taught in New South Wales. I think that the honorable and learned member for Parkes is right when he says that we must give the Governor-General in Council great power so that he may come down without warning and say, "I want this particular piece of land." 1 understand that the idea of the honorable and learned member for Indi is that we ought to allow the Governor-General in Council a power to appropriate the land provisionally, and if the Attorney-General will insert in this clause the word "provisionally" before the word "direct," the Governor-General in Council, if he finds that Parliament is not going to approve of what he has directed will be able to withdraw. It would be at his option then, and I think that the object of the honorable and learned member would be achieved. In Victoria we have an Act for acquiring lands for closer settlement. Under that Act a resolution of Parliament is necessary before the Governor in Council is authorized to conclude any contract. He makes a provisional contract, which is subject to the approval of Parliament. That is one way of doing it. I think that machinery enabling the Governor in Council to put his claw upon any particular land and to have the option, if Parliament does not approve of it, of receding from the contract would be the correct course to adopt. I admit that it needs machinery, but I am quite sure that the Ministry will be able to devise the necessary machinery for the purpose. If that suggestion is adopted, on the one hand we shall have the ultimate control, which Parliament ought to have, over the funds of the people, and, on the other, we shall avoid that sort of trickery which is continually used where notice has to be given before a contract can be made.
Mr WATSON
- I do not think that the Bill, as drafted, sufficiently meets the case, because, though it is necessary, as stated by the honorable and learned member for Parkes, that the public purpose for which any particular land is acquired shall be specified, it is easy enough to evolve fantastic public purposes, if Ministers desired to take that course. The clause, therefore, offers very little guarantee against jobbery. On the other hand, there is the unwisdom of hampering large public departments in respect of the acquisition of pieces of land of a small value. While the suggestion of the honorable and learned member for Northern Melbourne would be appropriate enough as relating to land in regard to which large values were involved, it would not be wise to make it apply to other transactions.
Mr Reid
- Small matters would be omitted in this way. There might be a general vote on the Estimates for post-office or school sites. They would cover approximately any number of school sites.
Mr WATSON
- I think we might insert a proviso that, where lands involve an expenditure above a certain amount, the whole matter should be subject to the ratification of Parliament. Ido not wish to see the Postmaster General hampered in regard to making proper provision for postal facilities to small townships in the back-blocks ; but, on the other hand, we wish to prevent anything in the shape of jobbery or any possibility even of a miscalculation.
Mr E SOLOMON
- I fully agree with what has been said by the last two speakers. I have known of cases in Western Australia in which the Government have been involved in a loss of.' thousands of pounds because they were unable to lay their hands at once upon property for railway purposes. In course of time, no doubt, the State railways will be handed over to the control of the Commonwealth, and it will be necessary then to secure lands for the purposes of railway construction. I think, therefore, that the Government should have the power of summary resumption of lands for publicpurposes.
Mr DEAKIN
- If I understand the mind of the committee aright, the criticism of the honorable and learned member for Indi will be met by a proposal, such as is contained in a number of our Acts, that all transactions involving an expenditure of over £1,000 shall be scheduled and laid before Parliament for 30 days in order to give honorable members an opportunity of challenging them. Until the termination of that period, the purchase

is regarded as provisional, but provision is made for compensating for temporary occupation. If the clause does not cover that, it will be enlarged to do so. That will cover what the honorable and learned member desires, and give honorable members all the freedom which is found to be necessary.
Mr Reid
- During the provisional period you need not disturb the owner in any way. The transaction will date from the time of the first notification, but you will not interfere with him during that period.
Mr DEAKIN
- The right honorable and learned member will agree with the Government that there should be no doubt as to the exact moment the property will vest ; it must vest absolutely and at once, in the Crown.
Mr BRUCE SMITH
- Under clause 7 it vests as freehold the moment the notification appears in the Gazette.
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Mr DEAKIN
- An additional provision is required that the Minister can arrange, and though the property has passed, occupancy may continue under certain conditions.
Mr. ISAACS
(Indi).- The views expressed by the Attorney-General seem to meet the case very fairly if they are carried out in the clause. I observe that the New South Wales Act is very much more guarded in its terms. It presupposes, I think, in every case, that the matter has been considered by Parliament.
Mr Deakin
- That the work has been authorized.
Mr ISAACS
- That the particular work in connexion with which the land is taken has been authorized - that there has been an appropriation, or that the Governor in Council has sanctioned the carrying out of the particular undertaking, and that the lands have been authorized to be acquired for school sites for example. In all cases, it seems to me, that the New South Wales Legislature very carefully, so to speak, considers beforehand the work in connexion with which the acquisition of land is to take place. I thoroughly agree with the honorable and learned member for Parkes when he says that when we take land, we must take it, so to speak, without warning. But that is perfectly consistent with the view I urge. We must give notice without any previous intimation, and we must provide that the value of the land when taken, if taken, should be the value at the moment of giving notice. All subsequent consideration is not to give a loophole for or afford an opportunity of affecting the value of the land, but is merely to enable Parliament to decide whether we shall take the land at the value determined at the moment of giving notice. That is all consistent with what I have said. We have carried out the principle in regard to many Victorian works. The Attorney-General knows that in the Victorian Railways Authorization Acts it is provided that when land is taken, the value shall be determined as at the beginning of the session or when the Bill is brought in.
Mr Deakin
- This is fixed at the 1st January.
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Mr ISAACS
- And, therefore, when we fix the date we give no opportunity for those little schemes for enhancing the apparent value of the land. The country is thus protected, and I think the method suggested by the Attorney-General will fairly meet the situation.
Mr. REID
(East Sydney).- I would like to very strongly impress on the Government, in the interests of whatever Government we may have in the future, that they should if possible be covered by parliamentary authority in some way, and the land resumed under circumstances which will give them an opportunity of considering the matter with the assistance of Parliament. We know that when a Government, perhaps in the public interests, acts without authority, they expose themselves to a great deal of unpleasantness. Above all, there is the great principle which we cannot too strongly employ in our laws in connexion with the Commonwealth, namely, that no public expenditure or liability leading to public expenditure, shall be at the arbitrary discretion of the Ministry. What is the essence of all government ? It is that all expenditure shall be watched as closely as possible, and have parliamentary sanction before it is incurred. That is one

of the main principles of government, and a very wise and salutary principle it is ; and if we are to observe it in reference to very small matters on the Estimates, surely we ought to observe it in large undertakings involving enormous amounts of public money. I am quite agreeable to any course which the Ministry may suggest which will give them power of prompt action, but which, at the same time, will not give any Government the arbitrary power of spending money without some sort of parliamentary acquiescence.
Mr. HIGGINS
(Northern Melbourne).I doubt whether the Attorney-General is going on exactly the lines which the committee seem to approve. As I understand, the object of most members of the committee is that the direction shall be an appropriation of land, if the Parliament afterwards approve, and it is to be an appropriation as from the time of the direction being given by the Minister. The appropriation is to relate back,, as soon as Parliament approves, to the moment the Minister says "I want that, land." Most of the committee are anxious,. I think, that there shall be, as it were, a, provisional direction. The next point is. that it is proposed to have this provisional direction applied only to cases involving over £1,000, or some other figure. I do not believe in an arbitrary line of figures, because such rigid distinctions are oftentimes. very hampering. If a piece of land, worth only £25, is wanted for a country post-office, I cannot see any harm in applying the provisional rule even to such a case.
Mr Watson
- The parties might have to wait nine months if Parliament were not sitting.
Mr HIGGINS
- There would be no need for any delay, because we can make provision for cases when Parliament is not sitting. I can well understand that where a very small sum is involved, the Minister will take certain risks ; but all of us know there may be jobs in constituencies when even under £100 is involved. Members of Parliament are often faced with the argument that although certain expenditure is wrong it has already been incurred, and that it is of no use discussing the matter ; and I think there would be no hurt done if the provisional arrangement were applied to every transaction. In most cases there would be a contract made, and, assuming that to be the case, no hardship would be involved by my suggestion, because there would be an arrangement by which a person, who might be entitled to a small sum, would get interest in the meantime.
Mr Watson
- The building of a country post-office might be retarded for nine or twelve months, waiting the sanction of Parliament.
Mr HIGGINS
- There need be no delay in cases involving a small sum of £25, about which there would be no doubt as to the sanction of Parliament.
Mr Watson
- The Minister could go on " spec."
Mr Deakin
- That would do away with the safeguard.
Mr HIGGINS
- At all events, if there be a limit at all, it should not be beyond £100. The provisional rule ought to be applied to every case ; and I have no doubt that when it is only a small piece of land, it would be a matter of agreement, in which there will be an arrangement made for the person who is to be deprived of the land, to get interest in the meantime. I would suggest, therefore, that when we come to clause 7, the words "if Parliament approve," be inserted.
Sir WILLIAM LYNE
- It seems to me, after what the honorable and learned member for Northern Melbourne has said, that there cannot be much harm in carrying out the suggestion made by the Attorney-General. The limit may be made less than £1,000, but that is not a large amount to trust the Ministry with. We can insert in the clause that any expenditure above £1,000 shall hang in abeyance until Parliament has an opportunity of dealing with the matter. But I presume that what will be done in the Commonwealth in regard to Estimates will be what is done in the States, and that a sum of money will be placed on the Estimates to deal with matters of this kind. I suppose that a provision will be inserted similar to that in the New South Wales Act, where the word " authorized " or some similar word is used in regard to the money so voted. There was a

large resumption of wharfage areas recently in Sydney, and the Government could not have carried out that resumption had there not been a vote passed years before, a balance of which remained unexpended, and which, technically, could be applied to this purpose. If there is a sum of money voted each year, there should be a provision put in one of the clauses, that the Government can exercise their power under that vote. In case there is no vote, an amount up to £1 000 or £500 could be dealt with, and afterwards approved. Any amount beyond that would require the sanction of Parliament. If that be done, there seems to be no difficulty ; and I will get the Attorney-General to prepare an amendment in that direction, which can be dealt with on a recommittal.

Mr Isaacs
- Will the Attorney-General propose an amendment ?

Mr Deakin
- Yes.

Clause agreed to.

Progress reported.

PACIFIC ISLANDS LABOURERS BILL

Second Reading

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Mr. BARTON
(Hunter- Minister for
External Affairs). - I move -
That this Bill be now read a second time.

This measure, like that which was dealt with in committee yesterday, embodies the policy, not merely of the Government, but of all Australia, for the preservation of the purity of the race and the equality and reasonableness of its standard of living. For many years the traffic in South Sea
Island labour and the question of its employment have agitated, not merely Queensland, but the whole of Australia, and that Agitation has been emphasized since the achievement of federation. It is to be looked at by federated Australia - not as a question affecting only one State, but as a question which belongs to the Federation which we have succeeded in establishing, and one which cannot with justice to the continent be relegated wholly to a State. I shall have a good deal of ground to traverse in speaking on this motion, because the question, if not the Bill, has a history. Much of that history I shall leave out. I shall make no recrudescence of the worst part of old memories. From the time of the passing of the first Imperial Act dealing with this subject - which explained its subject in its short title, " The Kidnapping Act," and which was preceded by a Queensland Act - for all will remember the Act of 1868 - this traffic has been condemned, not only by the rest of Australia, but by the continued policy and the repeated utterances of the statesmen of Queensland. Although the first legislative provision on this subject was made in 1868, there is reason to believe that the traffic had been instituted fourteen or fifteen years earlier, so that from the time of its beginning to the present day more nearly 50 than 40 years have elapsed. Asking honorable members to bear these things in mind, and not unduly charging their memories until I shall have come to specific facts and instances, I shall deal with this question under several heads, with a view to making it as easily intelligible as possible. I shall deal first with the importance of the industry to Queensland, a fact which I shall not fail to recognise. I shall then show that, in introducing the Bill, the Commonwealth Government is carrying out only what has been the declared policy of Queensland for the last 20 years at least. In the third place, I shall show that this, being the declared policy of that State, the question for us to consider is whether the time has come for putting it into effect, and for bringing to an end by just means what has always been admitted to be but a temporary expedient. I shall show, in the fourth place, that the putting of an end to this temporary expedient does not mean the putting of an end to the sugar industry, and I. hope, too, to be able to show that, putting aside all other questions but the great question of right and wrong, the Government is supported by facts and by the whole situation in its opinion that the traffic is bad and must be ended, though justly ended. In dealing with the question, and before I give a synopsis of the Bill, which being so short has, I take it, been read by every honorable member who hears me, I shall speak of the importance of the sugar industry to Queensland. I shall be forgiven by honorable members, if in matters so much involving questions of memory 1 refer to notes without which my statement could not be made. I wish to insist upon the

importance of this industry, not only to Queensland, but to the whole continent. The industry, whether white or black labour enters into it, is in its results and its possibilities important to Australia, not only as every great industry is as a national possession of the continent, but also from the fact that it is carried on not only in Queensland, but in New South Wales as well, and possibilities exist of its being carried on in other States, too. Because I believe we shall see the day when sugar will be raised not only in the tropical, but in the temperate latitudes of the continent, though, of course, not sugar extracted from cane. The importance of the sugar industry to Queensland is shown by statistics. In 1900 the whole area under cultivation in Queenland was 457,400 acres, of which 108,500 acres were under sugar cane. Up to that time the area under sugar cane in Queensland had been larger than that devoted to any other kind of agricultural production ; but in that year the area under maize exceeded that under sugar cane by nearly 20,000 acres. The area of land producing cane actually crushed during the year was 72,650 acres, and the weight of cane obtained from that area 848,300 tons, an average yield of 11.68 tons to the acre. From that weight of cane, 92,500 tons of sugar were obtained, an average of a little over 1.28 tons of sugar to the acre. The value of that sugar at the estimated rate of £9 19s. 91/4d. a ton - which was the price paid by the refiners to the manufacturers - was £924,380. The value of the sugar exported was £669,390 ; but I should explain that the term " exported " will not upon the institution of Inter-State free-trade strictly apply, because a large proportion of the sugar is sent to the other States of the Union. The value of the sugar produced in Queensland during the last eight years amounts to over £9,000,000 ; of which £2,000,000 worth was retained for home consumption, and £7,000,000 worth salt to New South Wales, Victoria, the other Australian States, and to foreign parts. The value of the machinery and plant used in the crushing mills and refineries is £2,355,000, and of the land and premises upon which it is erected £460,000, making a total of nearly £3,000.000. The value of the land, stock, implements, buildings, and other things used in connexion with the growing of cane, is roughly estimated at about £3,000,000 ; so that in all about £6,000,000 is invested in the industry in Queensland. Some people say that the amount invested is about £7,000,000, but even when we put it at £6,000,000, the great importance of the industry to that State, to which we all wish well, is immensely emphasized by the figures. The number of farmers - as Mr. Maxwell describes them in his report, and I take him to mean growers of sugar cane of all descriptions - is 2,610, and the average area of their holdings, notwithstanding the existence of many large plantations, 42-6 acres. The number of men employed in factories and refineries is 3,100, who are nearly all of them white, so that, counting in the cane growers, there are 5,715 whites directly employed in Queensland in the production of sugar. I am endeavouring to give the House a fair idea of the dimensions of the industry. The number of kanakas engaged in the industry, according to the latest information, is 8,710. So that honorable members will see that there are directly employed over 5,700 whites, and of male kanakas alone, 8,600: but there may have to be deductions made from that number on account of those holding exemption tickets, and working as members of the crews of vessels, or in other employments. These figures are supposed to represent the numbers in Queensland at the present time, as they are the latest returns existing in that State. I have said enough in connexion with these statistics to show that we must not trifle with this industry, and having reached this point, I shall have to recall the attention of honorable members to the fact that, when I was asked a question some time ago as to the date when this Bill would be dealt with, I told honorable members that it would be introduced - that is to say, its second reading would be moved, because that is what we generally look upon as the introduction of a Bill apart from technicalities - before the Tariff was laid upon the table. I also intimated that the question of the treatment of the sugar industry was so closely interwoven with the fiscal question that I could not ask honorable members to go on to debate a Bill which dealt, however comprehensively, with only one part of the question, and that I must ask them to suspend their judgment until they knew what the Tariff provisions were, as well as the proposals with regard to the employment of kanakas. That, of course, is reasonable enough when one considers that this industry has from its inception been supported by import duties, and will, I think, for some time to come, require to be supported by similar duties, in connexion with ' the scheme which the Government will lay before the House on Tuesday. We can no more divorce the question of the maintenance of an industry, which is largely dependent upon black labour, from the question of its future under the Federal Tariff than Shylock was able to divorce the pound of flesh from the blood which accompanied it - the one thing must go with the other. Therefore, I ask honorable members to form their own judgment upon what I shall lay before them, and to form their

own judgment upon this Bill with only one reservation - namely, that the Bill stands not alone, but the Bill and the support to the industry which must inevitably be given by the Tariff must be taken and must be read together. That is why I said all along that I did not ask any honorable member of this House to address himself to this Bill until he had seen what the Treasurer will lay upon the table as applicable to the fiscal conditions of Australia. Now, I will proceed to the next point, always saying this : that I admit to the full the argument of any one who says that this industry must not be lightly dealt with, that it must be treated in all reason, and I apply to that my own frequent declarations that it will be the policy of this Government to avoid the destruction of industries, and to regard existing substantial industries as the possessions of this nation. Now I pass to the second question, which is my contention that, in introducing this Bill, the Federal Government is only carrying out the declared policy of Queensland for the last twenty years. I propose to give a sketch of the legislative history of Queensland on that point, and I hope I shall show - I am confident I shall show - as the result of that consideration that this traffic has been regarded, at any rate for the last twenty years, as a mere temporary expedient. Now, how is that shown 1 First of all, on the threshold of this part of my address, I wish to point out that, in giving the names of those who have made significant declarations with regard to this policy, I am endeavouring to avoid any implication of them in the current politics of the day, because many of them have passed out of politics. At the same time I shall try to show that the policies and the utterances of these men were part of the policy of the State which has so large a share in the. question we are now dealing with. Where, therefore, I mention any name the holder of which has passed away, or some other name the holder of which is now in a high position, I do not wish to bring him into contemporary politics, but simply to quote his words and utterances as indicating the opinions of the large majority of the people whom, at the time, he seemed to represent. Now, the first Act regulating the kanaka labour was passed in 1868, and by Queensland, although kanakas had been employed in that State for at least ten or fifteen years previously to that, if Mr. Archer, who made that declaration during the debate on the Bill, is to be taken as an authority.

Mr Macdonald Paterson

- Not so long ; 1863, I think, was the date of the first importation.

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Minister for External Affairs

Mr BARTON

- I have as my authority the statements that were made during the debates on the Bill, but I may as well declare that I am not binding myself to any particular time. If we date the kanaka traffic from 1868, we have 33 years, and if we take it as having been in existence for five years prior to that, we have something like 40 years. In the debate on this Bill it was pointed out - and it is a curious fact - that the traffic had assumed some dimensions, because, however much influence and support any of us give to the London Missionary Society, it was then beginning to attack the traffic. The Act regulated the mode of introduction and the treatment of the kanakas, the mode of introduction being under licence, as every one knows, and the treatment being designed to prevent unnecessary hardship to those who were introduced. In 1877 a measure was brought in by the Hon. John Douglas, then Premier of Queensland - and as one is accused of knowing nothing about the history of this movement perhaps it is as well that I should be precise in referring to these matters - the Bill being devised to restrict the introduction of kanakas, and to limit their employment to the coast districts. Sir Samuel Griffith was a member of that Ministry, and in the debates on this Bill the abolition of the traffic was very strongly urged. The Premier, Sir John Douglas, who is now Administrator of Thursday Island, denounced the traffic - and I can give the page references for these passages inHansard - as "bad, wrong, and utterly rotten," and hoped that the measure, if passed, would ultimately put an end to the labour altogether. That is 24 years ago, and the House, at page 68 of the same volume of Hansard, was described by one of the speakers as being almost unanimous in its objection to black labour. I need no particular authority for the statement that the House had an objection to black labour, for those who have in many instances asked Queensland to wait a little longer have, nevertheless, joined in the denunciation of the traffic. This Bill failed to pass, and the Bill of 1880 that is now on the statute book of Queensland was introduced by Sir Thomas McIlwraith. The Bill became law under the name of the Pacific Islanders Labour Act ; it is really the principal Act of the series, and if I speak of the principal Act I shall mean this one. Now, this Act repeals the Act of 1868. It applied only to labourers, the stipulated time for whose return had not arrived. That is to say, it did not affect any

South Sea Island labourer who, having completed his agreement, was still in Queensland, but not under any control by way of agreement. That is a point to which I shall call attention in asking honorable members to note all the variations from the policy in the Bill we are bringing forward. The Act limited the employment of " islanders " to tropical agriculture, which is defined in one of the sections of the Act. In the course of the debate Mr. Rutledge, now a member of the Queensland Ministry, announced himself as an uncompromising opponent, on principle, of black labour. I do not want to pass any judgment on any one in this matter, but to trace the legislative history of this movement, and. the way in which it was regarded by those who spoke with an authoritative voice in this matter. However, it was found afterwards - this I deduce from the speech of Sir Samuel Griffith, reported in vol. 41 of Queensland Ilansard - that Polynesians were employed - I ask attention to that statement - in all branches of industry. I am not relying on my own judgment for this statement, but I am taking the voice of a leader of the people. The definition of tropical or sub-tropical agriculture in the principal Act was not strict enough, and as no provision was made in the principal Act for time expired Islanders, these were employed in many ways in which it was never intended they should be, and a Bill was therefore introduced by the same distinguished gentleman in 1884 to amend the Act of 1S80. Its chief provisions were the stricter definition of tropical and semi-tropical agriculture, the extension of the provisions of the principal Act to time-expired Islanders - a step eminently in the right direction - and the formulation of stricter rules with regard to recruiting in consequence of abuses which were becoming known. The chief object of the Act seems to have been the regulation of- time-expired Islanders, and let it be recollected by those who have in their minds the memory of those abuses in connexion with the traffic which sent a thrill of horror from one end to the other of Australia, that the Government of Queensland made the strongest efforts to do whatever legislation, regulation, and inspection could . do to minimize the necessary evils attendant upon such a traffic. I shall express presently my own opinion on any such traffic, no matter under what regulation. But we cannot withhold from Queensland a recognition of her constant endeavour to deprive it of all those elements of evil, except such as are inseparable from such a traffic. In introducing that Bill Sir Samuel Griffith said -

To tolerate the introduction of these kanakas is only a temporary measure.

Mr McDONALD

-paterson. - What date was that?

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Mr BARTON

- It was in 1884. I wish to quote a great deal from what statesmen in Queensland have said in the meantime. Sir Samuel Griffith continued -

I do not think that it will be ultimately found impossible to get white men to do field work. I believe that from my experience in the north. I wish the honorable member for Mackay could get some of the timber getters and miners in the north who are exposed to hardships infinitely greater than can exist in the cane fields, and ask them if they think it is impossible for white men to do the work on the plantations. I have never met one who has not scouted the idea unless he has gone into some commercial speculation the profits of which depend on the introduction of black labour. I do not believe that in Queensland it will ultimately be found necessary that in order to carry on field work we should introduce black labour.

It was further stated in the debate upon the same Bill that, in spite of the provisions of the principal Act, out of 12,000 kanakas in the colony, not one-half were engaged in field labour. Honorable members will be familiar with the name of Mr. Morehead, who was long a prominent figure in Queensland politics. In this debate he called the traffic what I venture to think it is, in its inherent conditions, and not because of any fault of the Government or of the Parliament of Queensland - "a system of limited slavery." Mr. Macrossan's is another honoured name. Honorable members will remember him as one of the wisest and ablest members of the Federal Convention of 1891, and also as having been present at the Melbourne conference in 1890. Unfortunately for Australia, he died during the sittings of the Sydney convention. Mr. Macrossan said -

There were no doubt scandals in connexion with the trade, and there always would be.

I venture to agree with that statement. It was said by Mr. Brookes, another member of the Queensland Parliament, that -

They all knew what the kanaka trade was - that it was a scandal from beginning to end, without a

redeeming feature.
Mr. Macfarlane,
another honorable member, said
They wanted to get rid of black labour as soon as possible.
Sir Samuel
Griffith said
When the time had arrived for the prohibition of black labour, the Government would take the responsibility for doing it.
That was in 1884. Seventeen years have since elapsed, and it goes to .illustrate the position which I take up that the history of this movement throughout the legislation of Queensland has been that the evils of the traffic have been generally admitted, and that its abolition has been regarded not merely as a question of time, but as a question of limited time. That view is emphasized by what I am about to mention. I come now to the following year, 1885. The Premier of Queensland at that time introduced and carried a Bill to further amend the Act of 1880, and to put a limit to its operation. The earlier sections of the Act deal largely with the cost of administration, and with amendments in respect to to. it. The most important object of the Act was secured by section 11, which provided that after December 31, 1890 - not 1906 - no licence to introduce Pacific Islanders should be granted. The Premier in introducing it said -
The majority of the people of the country - and I take leave to say that this is the opinion of a majority of the people of the State of Queensland as well as elsewhere - - have come to the conclusion that the time is approaching when we can no longer depend on the introduction of this kind of labour for agricultural work. Before five years are over, other arrangements of a more satisfactory kind will be made. We shall see some other system of agriculture substituted. Agriculture will be conducted by farmers working for themselves rather than by men working in large numbers for absentee employers.
Sir Thomas
McIlwraith said during the same debate -
He supported the clause, not because he believed the sugar industry could be carried on in North Queensland without black labour, but because the colony could not go on creditably before the world and continue the South Sea traffic.
In the same year the Government of which Sir Samuel Griffith was the head placed upon the Estimates a sum of £50,000 for the purpose of erecting central mills with the object of encouraging small settlers and planters who would grow cane without black labour. There was a debate upon this, in the course of which Mr. Hume Black, a strong supporter of coloured labour, quoted, though, no doubt, with disapproval, from a petition from his constituents at Mackay, as follows : -
Farmers can grow and cultivate at a profit small areas of cane without coloured labour of any kind.
The principal Act was again amended in 1886 by a short Act which amended the definition of " islander," and cast certain charges on the employers, such as medical attendance and the cost of burials. I am only led to mention this lest it should be said that I have omitted any Act which is a link in the chain. In 1889 a certain Royal commission reported. 1 mention their report, not for the purpose of making copious extracts from it, but because I wish to deal with a motion which was brought forward by a member of that commission in the Queensland Parliament, and opposed by another gentleman who has lately been taken away from us. In the report of that commission, two of the three members, Messrs. Cowley and King, stated that there would be extinction of the industry if the licences were withdrawn, it being then the law that the licences were to cease at the end of 1890. They said that the extinction of the industry would speedily follow, and therefore recommended the continued issue of licences for some years. But even they did not think that there should be an indefinite continuance. The late Mr. W. H. Groom differed from them, and supported the termination of the licences in 1890. I mention this to point the attention of honorable members to what follows. In the same year Mr. Cowley, after the presentation of the report of the commission, moved that the State should adopt some means for encouraging the sugar industry. He made the suggestion that kanaka labour should be allowed for a further period of five years, and stated that such an extension would answer all present requirements. Mr. Cowley is still a member of the Queensland Parliament. The then Premier, Mr. Morehead, announced that the Government were fully determined not to allow the re-introduction of coloured labour after 1890. He gave as his reason the fact that, if they did not allow the kanaka industry to drop after five years, they might be asked at the

expiration of that time for a further extension of five years, and so on. That is precisely what has occurred. Sir Samuel Griffith in that debate expressed pleasure at Mr. Morehead's declaration, and his hope that the question was permanently settled. He added -

It is idle to say that the cause of depression is the want of Polynesian labour. The causes are the same as have been in operation in every part of the world.

He then stated many of the fundamental objections to black labour, and moved an amendment on Mr. Cowley's motion so as to insure that any assistance given by the State should not involve a re-opening of the coloured labour question. I ask honorable members to mark what followed. After it had been stated by another honorable member that -

With the exception of districts more immediately dependent on sugar, there is no part of the colony returning a member to this House in favour of a continuance of black labour - which is the position in Queensland to-day, and which is almost the position that obtains in this Federal Parliament. Mr. Groom went on to justify his own report. If I may be excused for quoting him - and I think there is no honorable member who lias occupied a seat in this House whom I am more justified in quoting - I would point out that he said -

If the question is to be discussed on strong party lines, and with strong party feeling, and the result is to be, as the honorable member for Burrum has predicted, an appeal to the country, the planters will, in my opinion, get the worst of the contest.

That was the late Mr. Groom's opinion at that time. I quote it, not in any sense as a threat or warning, but for the purpose of pointing out to honorable members that the state of public opinion in Queensland to-day justifies Mr. Groom's prediction of that time. Mr. Paul moved to add to Sir Samuel Griffith's amendment the words " otherwise than by an extension of the coloured labour traffic for five years." That meant that the kanaka question was not to be re-opened except by an extension for five years. The amendment was put and negatived without a division. Sir Samuel Griffith's amendment was negatived by 31 to 25, and Mr. Cowley's motion in favour of giving some support to the industry was negatived by 21 to 5.

Mr McDONALD

-paterson. - In what year was that?

Mr BARTON

- I think in 1889. The next phase of the legislative history was in 1892. Honorable members will recollect that the Act of 1885 professed to put an end to the traffic at the end of 1900. That Act was not altered or repealed, and so far as legislation can take effect - I am not now speaking of administration - it took its effect at the end of 1890 by the prohibition of any further licences. Whether there were any further licences or not will be a fact in the memory of all honorable members who come from Queensland. Thus matters went on until 1892. I think it my duty to give this history, which, although it may not be very lively in its details, ought to be on record in the debates of this House. In 1892 Sir Samuel Griffith introduced the Extension Bill, and the question was also discussed on the Address in Reply of that session, before the Bill was brought in. In that volume of the Queensland Hansard, a manifesto previously issued by Sir Samuel Griffith appeared. With regard to this Extension Bill, I would like to say, that it is clear from the manifesto and the debate that the measure was never intended to operate in any other way than as a temporary measure. We shall see what the manifesto was, and it will go a long way to support the conclusion arrived .it, because it was . a manifesto of the leader of the Government who introduced the Bill.

Mr McDONALD

-paterson. - It was a coalition Government.

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Mr BARTON

- I believe it was a coalition Government, but I should like to point out that an admission of the temporary nature of the traffic from a coalition Government was a strong admission. In his manifesto Sir Samuel Griffith said -

I can see no alternative but to permit, for a time at any rate, the resumption of Polynesian immigration.

At that time certain financial troubles had occurred in Queensland, and other financial troubles were impending. The manifesto continued -

It should be provided that the immigration shall continue (unless, of course, otherwise ordered by the Legislature) for a definite but limited period of say ten years.
That was in 1892, and we are not three months from the end of the period in 1902. In introducing the ' Extension Bill which came afterwards, Sir Samuel Griffith said -
What is proposed is that the restriction which at present exists on the importation of Pacific Islanders shall be removed. It will be open to any future Parliament to renew that restriction.
And therefore it was certainly open to that Parliament.
But in the meantime persons engaged in the sugar industry will have the opportunity of knowing before the coming planting season that they will be able to carry on their industry without ruinous loss.
That" passage shows to a certain degree I think, if not conclusively, that the idea was to give some security for the immediate season and for only a few seasons afterwards. Now, I come to the utterances of the honorable gentleman who is now Premier of Queensland. He said -
I do not regard this as a permanent solution of the difficulty, because in ten years there is not the slightest doubt the population of the islands will be so reduced that the supply will have ceased.
Whether that was partly the result of the traffic or not, I do not know. But being asked-" What then 1" he replied-
In ten years' time wo shall know a great deal more about sugar growing than we do now. We may be able to do with less labour in the field, and I know there is nothing like the amount of labour required now to what was required at the start.
I take it that conclusive proof is afforded that it was the intention of the Government of the day that this re-introduction should be only temporary. That is shown by the reason given for not limiting it to a certain period. The reason given was that they were afraid that if they fixed a period the industry would become a vested interest, and that they would find a difficulty afterwards in carrying out the cessation of the traffic - that by mentioning a period during which the re-issue of licences might go on, they would be giving the planters a vested interest in the continuance of the traffic for that time. I could quote a marked passage in Hansard, of which what I have said is a condensation. Sir Samuel Griffith, later on, said -
The object of the Bill is to give immediate relief in a pressing trouble.
That being the object of the Bill of 1892, it cannot be safely or correctly contended that that object continues to be served by leaving it in operation any longer, except so far as may be necessary to end a traffic which has met with the condemnation of all classes of statesmen in Queensland from the beginning until now.
Mr Macdonald-Paterson
- That is incorrect.
<page>5499</page>
Mr BARTON
- There may be some exceptions. I admit it may reasonably be urged against me that there are and have been public men of Queensland who have spoken with some tolerance of the traffic at one time, and who have spoken strongly against it at another time. That appears to be the lot of politicians at times. The McIlwraith Government in 1893, the next year, brought down a Sugar Works Guarantee Bill, and Sir Thomas McIlwraith made a speech on the second reading. He pointed out that the earlier expenditure in 1885 for the same purpose was intended to supplant black labour by white labour, and he went on to say that the effort had been a failure. Mr. Chataway, a well-known and much regretted member of the Queensland
Parliament, who died a very little while ago - this year - said on that occasion -
I think this Bill will help the state of things at which they (the opponents of black labour) wish to arrive.
Further on Mr. Chataway said -
There is no one who wishes to see coloured labour permanently grafted on the institutions of this country.
The whole debate is further evidence that the system was regarded as only temporary. Passing over seven years, the next fact in the history to which I wish to call attention is that in 1900 the present Government of Queensland introduced a Bill to amend the Sugar Works Guarantee Act. In speaking on that Bill the Premier, Mr. Philp, said -
The sugar industry is a great thing for Queensland, and on both sides we desire to see it carried on with as little black labour as possible, and the only hope of doing this is by increasing the number of central

mills with the object of getting families to grow the cane.
In fairness to all concerned, I have now dealt with the legislative history of the matter, as well as with the question of the importance of the industry to Queensland. I want now to say a few words on another topic. This being the declared policy of Queensland, the question which follows now is whether the time has really come for putting that policy into effect, not as a new policy, but as an acknowledged policy for about a quarter of a century, and for bringing to an end, not unjustly, but by just means, what has always been acknowledged to be a temporary expedient. The answer to that, on the part of the Government, is " yes," and " yes " as many times as the question is put. Is there any difference, then, in the attitude of Queensland in regard to this traffic 1 I claim that the general election shows that the attitude of Queensland in relation to this traffic is more emphatic in the demand for its abolition on just terms, and on no other terms, than it has been almost at any previous period. If I went a little beyond the general election, I could point to a worthy successor of a worthy father, whom we have lately welcomed amongst us, and who was elected by an enormous majority, thus emphasizing over and over again the policy I have referred to, as well as the policy of a Bill we have just passed through committee. That is the result of public feeling, as shown in the general election, and in a byelection. The time allowed in the Act of 1885 was only five years, which period expired at the end of 1900, and it was the professed object of the Act of 1892 to give temporary relief. The manifesto of the statesman who introduced that Bill spoke of an ultimate term of ten years, which will have altogether expired at the end of this year. If statesmen are to be taken at their word, and are to be regarded as representing the feelings of the people for whom they speak, surely there will be some defence for those who claim for Queensland that she should be taken at her word of that day - a claim which may be made by Queenslanders as well as by Australians generally. But it has still to be considered that there is no one in this House who wants to deal with undue haste, or in an unnecessarily drastic fashion, with an industry in which very large capital is embarked, and the destruction of which would be an injury not only to Queensland, but to the whole of Australia. We propose, therefore, to deal with the industry by this Bill and otherwise, in such a way as may enable us to carry out the policy which Australia demands from us, and which we first proclaimed to Australia in the most resolved fashion, being at the same time determined not to do any injury that can be avoided. I take it that this is a sufficient manner of dealing -with the third head of what I have to say. The fourth question of those to which I promised to address myself, is : Does putting an end to this temporary expedient mean putting an end to the sugar industry? In the same way as we answered "yes" to the first question, we can answer " no " to this question. The Government intrusted the duty >f bringing up a report on this subject to a scientist, and a very practical authority on the cultivation of sugar. The Government did that knowing full well that this gentleman had previously reported to the existing Government of Queensland, and that he was receiving a salary from them. We had no hesitation in submitting certain questions for his report ; and I am glad we did intrust the duty to that gentleman, because I believe we have received from him an honest answer to our questions. I have already submitted the question whether putting an end to this temporary expedient means putting an end to the sugar industry ; and I refer again to the passage quoted from Mr. Philp a little while ago when he spoke in regard to the Bill of 1892 being a permanent solution of the difficulty, and said that he did not regard it as such, because in ten years there was not the slightest doubt the population of the islands would be so reduced that the supply would cease. It will be remembered that Mr. Philp being asked - " What then ? " replied -
In ten years' time we should know a great deal more about sugar growing than we do now ; we may be able to do with less labour in the field, and. I know there is nothing like the amount of labour required now to what was required at the start.
That is a significant utterance, because it does not look as if the means taken to reduce the number of black labourers would put an end to the sugar industry. Now, let us look at something else ; and, as the Government asked for this report, I may be allowed to quote from it. I find a passage which I think is worth bringing under the attention of the House. Referring to the policy of placing a greater number of cane-growers on the sugar producing areas, Dr. Maxwell's sets forth that -
This result is seen to be working itself out in the history of the past recent years. In 1885, the number of white farmers growing cane was relatively fractional ; but the number of Pacific Islanders in the colony was 10,755, and the sugar produced was 55, 796 tons. In 1898, as it has already been stated, the number of white cane-growers, in Queensland was 2,610, with the production of sugar increased to

123,289 tons, and the number of Pacific Islanders reduced to 8,826. The actual reduction in the number of islanders is. 1,929, but the relative reduction is not less than 00 per cent, from what it was in 1885, when the production of sugar at these respective periods is considered.
And yet the production has gone on by leaps and bounds -
The logical indications of the situation are that the South Sea Islander is a declining factor -
And I think we may say he is a factor we shall grow to decline - in sugar production in Queensland, and that the decline is due to a natural operating law, by reason of which the lower is being gradually substituted by a higher form, and by a higher standard of producing agencies, in these locations where the laws or conditions of nature, such as climate, do not operate in the opposite direction. This law may be expected to continue to operate, and with continued and increasing results, providing it is not checked through any device by which it may be sought to hasten the rate of movement of natural law.
Whether it has been the policy of Queensland during all these years to hasten the methods of natural law, or to recognise the inevitable, both in its social aspect and in its relation to the industrial conditions of sugar-growing, I do not know, but I prefer to believe that the statesmen of Queensland have been sincere in this matter. At page 20 of the same report I find a further passage which I desire to quote. Dr. Maxwell writes -
It is indicated that invention may be expected to provide mechanical devices for the harvesting of the cane crop, and for other work ; and these will further strengthen the current tendency to Substitute lower by higher forms of labour where the conditions of nature permit.
There is, therefore, reason for us to place some reliance upon the progress of invention, which, when forms of labour such as these have had to be dispensed with, can perhaps be relied upon to find some substitute.
This tendency - continues Dr. Maxwell - already very marked, will be accelerated by the settlement of a greater number of white families upon the grain-growing areas, resulting also in a more intense and productive cultivation of the partially exhausted soils. The increment of white settlers upon the sugar-growing lands during the past decade, and the concurrent increase in the volume of sugar produced, with the reduction in the number of islanders employed, demonstrate the present tendency, and indicate that, under the current operation of given natural laws, and particularly in certain latitudes, the Pacific Islander is a relatively declining factor in sugar production in Australia.
Let us take this into consideration in connexion with the question we have asked whether we are ruining the industry by putting an end to this employment and this traffic. If it is true that the cane-fields are increasingly able to do with a smaller amount relatively of black labour, if it is true that the extension of smaller areas under the operation of the sugar mills is leading to a greater production on the part of white families and to a further dispensation with black labour in that direction, it does not help the question to call this a natural tendency. The question for us is whether if there is this natural tendency we should leave it to the slow evolution of ages, or assist it in the same way that wo assist other good things - helping so long as we do not also destroy that which is good. I think we can do it. I think we shall be able to do it under this Bill. After all, the kanaka is only one factor in the cost of production: If black labour is abolished, and one factor, the cost of labour, is thereby increased in price, the question arises, "Cannot other factors in the production be cheapened?" I think they can. There is a general consensus of opinion, which is shared by Dr. Maxwell - and I leave it to others to read his reports ; I shall not quote them for this purpose - that the methods of agriculture in regard to cane-growing are in many cases crude, and that many steps could be taken by growers, or by the State itself, which would go far to counterbalance the increase in cost of production which is involved in substituting white labour for black. I am sure that is only a reasonable proposition, and I shall not labour it further by quoting from these reports. Those who turn to Dr. Maxwell's reports, both that which he gave to the Queensland Government, and that which he has so honestly rendered to me, will come to the conclusion that he describes a state of crudity in method ; a progressive deterioration Of the soil due to the failure to replace in it those elements which the sugar cane takes out of it ; and a neglect of all those methods of cultivation which, when applied elsewhere, have been highly beneficial to the industry. He shows these things in so vivid a form in his report that this question is at once present to the mind of any one who gives his attention to the subject : Is the cry that you must indefinitely have black labour the result of a normal condition of affairs, or does it spring from that failure of production which inevitably results from unscientific or careless methods ? There is

abundant evidence of that state of things. Do not let me be understood for a moment as making any attempt to depreciate the position of or to speak offensively of the planter in Queensland. I am endeavouring to give full consideration to his case, but I must be permitted to say, at any rate, that while we allow a cheap means of evading better methods of agriculture to go on, we are decreasing the likelihood of any substitute being obtained for these bad methods.
Mr G B EDWARDS
- The history of the world shows us that.
<page>5501</page>
Mr BARTON
- The history of the world teaches, or at any rate ought to, teach us that. I venture to say that although many planters are striving to improve their methods, it will not be until a certain limit is placed upon this employment and this traffic that the full attention which is necessary to the scientific methods of cultivation, and to the application of science by way of machinery in sugar cultivation, will take place. Until then they will not be developed. Dr. Maxwell's reports show over and over again the immense natural fertility of the soils of Queensland for cane-growing, and the very great suitability of the climate to that industry. One would think that with conditions in the shape of soil and climate which are pointed out by Dr. Maxwell to be superior almost to any which exist elsewhere in the world, a traffic and an employment which other places have been able to do without could be done away with in respect to this industry in Queensland. I take it that they can be. The industry only needs the spur which will be afforded by the operation of the measures that we propose, in order to lead it to adopt better cultivation methods, and to attempt also to solve the question of machinery.
Mir. G. B. Edwards. - Manure, mechanism, and a market are wanted.
<page>5502</page>
Mr BARTON
- A great falling off is taking place in the yields per acre. This is shown over and over again by Dr. Maxwell. If honorable members will look at the tables he has collected, they will see that in some of the richest districts there has been a falling-off year after year. This falling-off is not because the soils are not equally fit with those of other parts for the cultivation of sugar, but because elsewhere certain constituents which are withdrawn from the soil by the cane are given back. In Queensland there are not, but they will have to be given for the industry to flourish, whether the labour which works it is black or white. In some places, according to Dr. Maxwell, there is a great falling-off of yields. In districts which have yielded from 40 to 60 tons per acre the yield dropped last year to less than fifteen tons - a drop of about seventy-five per cent, on the late rate of production. The causes are given and explained. Let me pass that matter over by saying that I am sorry that the causes exist, but I trust that with the adaptability of our race, the planters will be able to correct these results by adopting the suggestions which Dr. Maxwell makes. Better evidence than all this is to be obtained from the conference which was held in Bundaberg in June of this very year. Without quoting from the report of that conference, I will say that it bears out Dr. Maxwell's statement. Among the defects in the conditions of sugar-growing, if I may take the very able statement made by Mr. Denman, are the short tenancies in vogue, the failure to introduce up-to-date and labour-saving machinery ; insufficient ploughing; neglect to put plants in deep enough; and no care exercised in the selection of plants. This is important, because there are great differences between the sugar contents of various canes. The commission's report in 1889 mentioned a class of cane recently introduced into Queensland which contained 22.6 per cent, of crystallizable sugar as against 12 to 19 per cent, contained by the ordinary varieties in use. Then Mr. Denman speaks of the carelessness in treating the trash, because, under the method of burning which is employed the soil is deprived of much nourishment. He also refers to the careless methods of planting. These are the causes given by a well-known sugar planter, who has put his views in an admirably clear and well argued fashion. I have but to mention one more fact, namely, that the progress of mechanical invention will cheapen production, and diminish the necessity for black labour. On this point Dr. Maxwell has stated in his report that it is impossible to predict, within any near period, when the problem of cane cutting will be solved by machinery. He mentions the case of a Queenslander, who has been studying this question in America, and endeavouring to perfect and patent a machine for the purpose. A late extract from a newspaper which is not to be accused of giving an undue support to this Government, or to our policy of a " white

Australia" - I refer to the Brisbane Courier of 10th September - explains the matter. According to that newspaper, the gentleman who, at the time of Dr. Maxwell's report, had not apparently made that progress which would enable the machinery problem to be definitely settled, has since solved the question practically by his patent, and invented a machine which will, by a reciprocating motion, cut the cane close to the ground - a process which other machines have failed in - and so prevent the failure to get healthy cartoons. The question at issue in this matter has always been whether such a machine could be invented, but if the Brisbane Courier is rightly informed, the problem is practically solved. We are therefore not so much in the dark about the labour question as we were twenty years ago. If it was then a question only of temporary expediency, the flood of greater knowledge shed upon it of later years makes it not only more just, but more politic, that its temporary expediency merely should be recognised, and that a limit should be put to it. Now I come to my last point. Putting aside all questions but the one great question of right and wrong, this Government thinks that the traffic in itself is bad, and must be ended. . The traffic, we say, is bad, both for the kanaka and for the white man. It is bad for the kanaka, because it is not inaptly described by Mr. Morehead as limited slavery. I say this because, in some aspects it must be slavery. The difference in intellectual level, and the difference in knowledge of the ways of the world between the white man and the Pacific Islander, is one which cannot be bridged by acts or regulations about agreements. The level of the one is above that of the other, the difference being one in human mental stature - of character as well as of mind - which cannot be put aside by passing 50 laws or 1,000 regulations. There must be an inequality between these two classes of people when they come to an agreement, and when we consider the question of getting a man - no matter under what regulations or control - from his native island, and asking him whether he understands under what conditions he is to serve in Queensland ever so many miles away, is there any one here who believes that the understanding of the man who explains is the same as the understanding of the man who listens, or that the listener is capable of understanding the facts that are mentioned to him ? Even when the recruiting ship arrives in Queensland, and the agreement has to be signed before the Government agent, however much a man may appear to understand, his degree of understanding can only be measured by his mental capacity, and that no statute can enlarge. He cannot be made to understand the conditions of his engagement. He may be brought to a state of partial understanding, but it is impossible to say that he can have a degree of contracting capacity equal to that of the man who is dealing with him. If that is so, and if this arrangement which takes place must be deficient in some of the essential characteristics of a full and intelligent agreement between two capable parties - between two ordinary men of the world, the one understanding what the other propounds - a Higher power having prevented equality, the result is not an agreement at all, but something which
British instincts have always revolted against. I hold that opinion. I do not want to speak too strongly about it, but I believe that is another and a very strong reason why this traffic should be terminated. We admit that restrictions have been placed upon the traffic, and we acknowledge the honesty of the Government and Parliament of Queensland in imposing these restrictions. We have no complaints to make of them, but we point out that human nature has made the difference, and legislation cannot correct it. There is no reflection to be cast upon the character of the employers, and, notwithstanding the complaints I have seen in the newspapers, I believe the Government of Queensland does its very best to see the Act carried out in a proper and reasonable manner. Although I did not see very much when I was in Queensland, I carried away the same impression about the planters, and 1 came to the conclusion that it was not in the individual that there was a fault, but in the inherent nature of the business. It will never be freed of its inherent character of slavery, because the limits have been set by a power which cannot be denied. The kanakas cannot understand these agreements, because the nature of a contract is foreign to them. The man who has been in Queensland before may possibly understand the nature of the agreement. By three years of this kind of service he may learn to understand what it is he is to undergo for another three years ; but his consent to that may be largely due to causes that we can understand - great hesitation ingoing back to the islands unless he is put down exactly where he came from. At any rate, our system of employment is not based on essentials such as these. Our system of employment as a State and as a nation is based upon wholly different conditions, and these are intrusions into it of elements so hostile to our sense of right and wrong, and of the relations which should subsist between man and man, that the sooner we put an end to them the better it will be for all concerned. Apart from

this, the kanaka traffic is depopulating the islands from which these people come. What evidence is there that it is improving the social conditions among them 1 I do not need to allude to things which everybody knows ; but there are facts enough to show that it implants factors and conditions into these islanders which by their very communication are disastrous to their own people when they return to them. The traffic is bad for the white man - both for the employer and the white population generally ; and on this head may I use a few words from the late Professor Pearson's book on " National Life and Character," from which I quoted during the discussion on the Immigration Restriction Bill. Professor Pearson says - When he (the black labourer) multiplies, the British race begins to consider labour of all but the highest kinds dishonorable, and from the moment that a white population will not work in the fields, on the roads, in the mines, or in factories its doom is practically sealed.

We do not want to see any tendency of this kind asserted, and I hope the Bill, regarding which I have now to say a few words in conclusion, will have the effect of correcting any such influences by putting an end within a reasonable and just period to something that we do not want amongst us, and at the same time avert the destruction of an industry. This Bill deals with two things practically - and from the history I have given of these Acts, I think it will be understood that they hinge upon two things - namely, the license to introduce the labourer, and the agreement to be made afterwards with his employer. This Bill sets a period to both, and it sets a shorter period to the licences .than to the agreements, because it is only just that the agreements shall have a certain time in which to run out. No licences will be granted under this Bill except during next year and the year afterwards, but a period of three months after the expiration of the two years is allowed for the introduction of those on board licensed vessels up to the 31st March, 1904. In other words, the Bill allows two years for the issue of licences, and two years and three months for the introduction of South Sea Islanders under licence. It prescribes also that the licences to be issued next year - and we hope the House will assist us to place this Bill on the statute-book so that it may begin to operate at the latest at the beginning of next year - may be used te the extent of replacing not more than three-fourths of the number of labourers who have returned to their native islands during this present year.

Mr Cruickshank

- How long have the licences to run ?

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Mr BARTON

- They are annual. It is also provided that during the year 1903 the licences shall not extend to the introduction of more than half the number of Pacific Islanders who have returned to their native islands during the year 1902. Then a further period of three months is given so as to allow those who hold licences to complete their voyages. These are the provisions of the Bill as to the introduction of black labour. But the principal provision of this measure is, I think, the shortest, namely, the 7th clause, which reads as follows : -

No agreement shall remain in force after the 31st day of December, 1906.

That is to say, these agreements may go on, subject to existing laws, during 1902, and up to 1906, or for a period of five years. According to the Bill, an agreement means -

Any agreement for service made with a Pacific Island labourer within or under the Pacific Island Labourers Acts 1880-1892 of the State of Queensland.

Freedom is given in connexion with these agreements - and I think there ought to be such freedom - to make them for any term the law allows within the period fixed for the continuation of the employment of kanakas. But there is one term beyond which no agreement can exist, and that is. the 31st December, 1906. During these five years we give liberty to enter into agreements - although we terminate the introduction of labourers within a little over two years - so that the planter may have time to turn round, and so that there may not be any unnecessary destruction involved in this process My honorable colleague the Treasurer will show next week that that destruction is not involved, simply because it will probably be to the interest of the sugar planter to substitute white labour for black with such expedition as he may. This Bill is a short one, not only because we have endeavoured to make it short, but for the additional reason that it could not be a long Bill, because the machinery by which it is to operate is contained in the local Acts of Queensland. So far as it is to be applied in Queensland there is machinery contained in the local Acts, and we religiously refrain from the administration of the Queensland Acts,

when it is passed, for two reasons. First of all we do not wish to create any jealousy. We do not wish to change the hands in which the administration of these Acts lies,_for two reasons. First of all we do not want to : have any friction with the great and important State which possesses our entire good-will, and which I believe possesses the good-will and love of this Parliament ; and secondly, we do not wish to impose upon ourselves the necessity of handling a traffic which, after all, we should not be proud to handle at all. We do not want to touch it unless we are obliged to, and we think that by altering the administration as far as is necessary to carry out the provisions of this Bill, and no further, we shall enable the local machinery to do what is required, and at the same time evoke little or no discontent, except such as is inseparable from a change of laws. The responsibility will continue to rest in a very large measure where it now rests - that is where the traffic exists. We have a further provision about deportation. It operates in two ways. I wish first to say a word or two in regard to those who are found out of agreement in any part of Australia during the period covered by this Bill - that is up to the end of 1906. We empower an officer, having authority for the purpose, to bring before a justice of the peace any Pacific Island labourer found in Australia during that period whom he has reason to suppose is not employed under agreement. Upon the justice being satisfied that he is not thus employed, and has not been so employed for one month prior to that date, he may be returned to the place from which he was originally brought into Australia.

Mr V L SOLOMON

- Will that apply to time-expired men?

Mr BARTON

- It will apply to all who are not under agreement. If they are a month out of employment, they may be brought before a justice of the peace, and if they cannot show that the charge against them of not being under agreement is untrue, they are subject to be deported.

Mr V L SOLOMON

- Have we the power to do that ?

Mr BARTON

- I think we have the power, and as I said last night in regard to another matter, I will take the risk. It is clear that no Pacific Islander ought to be in Queensland after 1906. His only excuse for being in Australia prior to that period is that he is here under some agreement. As he will not be able to urge that plea after the date which 1 have : named, he- ought not to be retained in Australia. Being without the only excuse that can be offered for his presence in Australia, we take the power to return him to the place from which he was introduced, and I hope we shall use a little discrimination in that matter, so that he may be returned to a safe place. These are the main provisions of the Bill. It remains for me to apologize to the House for having occupied so much time. I need scarcely apologize, however, because I think it well that certain facts, historical and legislative, should be put upon record the first time that we touched upon this question. I apologize, therefore, only in a limited way, and I hope I have to some extent relieved those who have heard me of the necessity for investigating some of the more intricate points in connexion with these statutes. They may take what I have said for granted, and I may add that I have now in print a summary of the legislation enacted in regard to this matter, which will show honorable members exactly the provisions of the statutes relating to it. I thank the House for the tolerance and kindly hearing it has given me from both sides, and I hope to be able to say before this year closes that Australia will have this measure to accompany the Bill which we had in committee yesterday, the two together being not merely the realization of a policy, but a handsome new year's gift for a new nation.

Debate (on motion by Mr. Joseph Cook) adjourned.

SERVICE AND EXECUTION OF PROCESS BILL

Bill returned from the Senate with amendments.

PROPERTY FOR PUBLIC PURPOSES ACQUISITION BILL

In Committee

(consideration resumed,

vide

page 5492) :

Clause 9 (Compensation for private lands taken under this Act).

Mr. HIGGINS

(Northern Melbourne).I wish to ask the Attorney-General what further force paragraph 2 of this clause has than is provided for by clause 43 ? It seems to me that the paragraph mentioned might be omitted if we retain the provision in part 5.
<page>5505</page>
Mr Deakin
- I will look into that point.
Clause agreed to.
Clause 10 (Acquisition of underground land).
Mr GLYNN
- This is one of the clauses which I think is beyond the powers conferred by the Constitution, inasmuch as we propose to take over portion of a man's property without compensation because there is no damage done to the surface which is not taken over. We are therefore exceeding our powers, as the Constitution only allows us to take over property upon just terms. It seems to me that this clause will be open to challenge in the courts of justice.
Mr DEAKIN
- If no damage is done it is perfectly just to carry out a work without compensating the owner of the - land. I admit that in one sense -where any underground work, such as the construction of a tunnel, is undertaken we take a part of a man's property without compensation. But we do so only in a technical sense. The point in dispute is not worth much, but I will reconsider it.
Sir WILLIAM LYNE
- This clause brings to my mind many matters with which I have had to deal in connexion with tunnelling in the neighbourhood of Sydney. Tunnels have been taken underground there in all directions as conduits for water or sewage. There has never been any payment for surface rights in such cases, and we are simply taking similar powers here
Mr Glynn
- Have we the power to do so under our Constitution ?
Sir WILLIAM LYNE
- If we have not, we have power to do very little Indeed. At the present time there are a number of these tunnels being put down in the cities of Sydney and Melbourne. If we have not the right to carry out such works, we must stop all the ordinary works required in connexion with' the buildings we control at the present time. If the Constitution does not give the power which the State Acts give, we cannot possibly cany out the works which are now being dealt with in the department over which I preside. I should say there must be a power, which, if not defined , is inherent, for us to deal with matters of the kind. There are provisions enabling us to deal with springs, reservoirs, dams, and so on, and all these are put in in order that there shall be no damage or injury done without compensation to the individual who owns the surface, though the surface rights are not treated as extending to any depth.
Mr PIESSE
- Does this clause go far enough in the protection of structures ? There is to be no compensation allowed unless the surface of the overlying soil is destroyed, or the support of such surface is destroyed so as to seriously affect the land. But supposing there were a case where the whole surface had been removed, and a structure erected on the site. I do* not know that, strictly speaking, there would be compensation claimed in such a case, although the structure might be seriously affected, and there ought to be some addition to the clause to prevent a point of that kind being taken. I would suggest that words should be inserted so as to include the support of any structure either on or below the surface, destroyed or injuriously affected by the construction of public works.
Sir William Lyne
- If an injury is done to a building by carrying a tunnel underneath the surface, is there not the right to obtain compensation?
Mr PIESSE
- It is provided in the Bill that underground works shall be constructed without any compensation being allowed, but if a structure is injured compensation ought to be paid.
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Sir William Lyne

- And we are prepared to pay it.
Clause agreed to.
Clause 12 -
Every person or State claiming compensation in respect of any land so acquired, or work or other matter done under the authority of this Act, shall within 120 days from the publication of such notification, or within such further time as a justice of the High Court upon the application and at the cost of the claimant may, either before or after the expiration of such 120 days, appoint in that behalf, serve a notice in writing upon the Minister.
Mr. HIGGINS
(Northern Melbourne).I move -
That after the words " High Court" the words " or of the Supreme Court of the State "be inserted.
If the Bill be carried as it stands, it will mean that the claimant will have no right to make application unless the High Court has been constituted. The Government have in its category of Bills the Judiciary Bill, *nd a Bill to create the High Court, but it by no means follows that before this Bill comes into operation the High Court will have been created. But it would be a lamentable thing if a claimant were not able to get the advantages of this Bill for that reason.
Sir William Lyne
- I would suggest that the honorable and learned member should frame an amendment providing that the appeal may be to the Supreme Court of a State until the High Court is constituted.
Mr HIGGINS
- No harm would be done by giving the option between the High Court and the Supreme Court of a State. I have a strong view personally that a little postponement of the creation of the High Court would be a good thing. It would save a huge expense, and at the same time all, or nearly all, the work could be efficiently done by the Supreme Courts of the States as they stand at present. I do not wish to press that view at this stage, but I merely desire to follow what has been done in the Post and Telegraph Bill, and leave the Supreme Court of the State as an optional court. If afterwards when we are creating the High Court we think fit to take away the jurisdiction from the Supreme Court of a State, that can easily be done by a clause in the High Court Bill.
Sir WILLIAM LYNE
- If the words suggested by the honorable and learned member for Northern Melbourne were inserted it would leave it open for all time for any one after the High Court is created to take his appeal to either the State Court or the High Court.
Mr Higgins
- Is there any harm in that ?
Sir WILLIAM LYNE
- I think it would create uncertainty in the first place, and the High Court is the proper court to deal with these matters. The honorable and learned member, if his amendment be passed, would have to go further, and provide that it must be the High Court of the State in which the cases arises.
Mr Higgins
- It is only a small matter that is involved, and we surely do not want the machinery of the High Court to deal with it.
Sir WILLIAM LYNE
- Does the honorable and learned member mean that this only applies to applications for extension of time?
Mr Higgins
- Yes.
Sir WILLIAM LYNE
- Then I do not oppose the amendment.
Mr A C GROOM
- The procedure in the clause seems to be a very expensive one. It would be much simplified, and would be carried out with much less cost, if claimants could go to a court of arbitration in the same way as is done under similar circumstances in Victoria.
Mr A McLEAN

- I thoroughly approve of the suggestion of the honorable member for Flinders. I cannot conceive how it is possible to expect a Judge of the High Court to be competent to deal with all matters of land values, as such competency can only be acquired after many years of practical experience. However competent in other respects a Judge may be, it is unreasonable to expect him to have the necessary training to enable him to properly appraise the value of land. It would be much simpler and less expensive to have these matters dealt with by practical experts who understand the business. I do not know why the High Court was chosen as a tribunal to assess the value of land, or whether a similar course is taken in any of the other States. I have known Judges of Courts to sit as umpires in arbitration, but I have never known of a case of the disputed value of land to go to a High Court.
Mr Isaacs
- If the parties are not satisfied they go to the court.
Mr A McLEAN
- I have been connected with many hundreds of cases, and I never knew one to be taken to court. There ought to be provision made for arbitration as well as for appeal to the court. Surely, it is not necessary to frame our laws in such a way as to find business for a High Court, and pile up the expenses for the people. It appears to me that the time allowed is unreasonably long, because the Attorney-General, if he were busy with other matters, might delay a settlement for 90 days. I can conceive of cases where the property taken might be the whole of the possessions of the family, and under many circumstances a delay of three months would prove ruinous.
Mr ISAACS
- In one respect I agree with the honorable member for Gippsland, that the period of 90 days should be shortened.
Mr Deakin
- It must be within 60 days.
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Mr ISAACS
- The honorable member for Gippsland is referring to a subsequent clause. In regard to arbitration, there are two systems by which we assess the value of land in Victoria. If the amount involved is under £200, the matter is settled by a police magistrate ; but, if it is over £200, it goes to an arbitrator agreed on by both Parties, or there are two arbitrators and an umpire, the umpire being a County Court Judge. In each case the umpire is a lawyer, and in nine cases out of ten he has to decide the matter. Each contending party selects what is called an indifferent person ; but we know perfectly well that in a great many instances the arbitrators are really advocates. In many cases they are also lawyers. The result is that in almost every arbitration it is the police magistrate or the judge who decides.
Mr A McLEAN
- A case very rarely gets to the Judge.
Mr. ISAACS. - My experience is that they do. In cases that are at all important, the parties if they are dissatisfied with the arbitration go to a Judge and a jury. I commend the Bill for the reason that it does not provide a double-barrelled method of arriving at the result. It has one method, and one method only. There is a provision in clause 15 that if both parties consent they can go to arbitration, but a Judge is not to have power to send a case to arbitration except with the consent of both parties.
Mr A McLEAN
- Why should the parties be compelled to go to the Judge in the first instance?
Mr ISAACS
- It can be done at a very early stage. I admit that the Victorian law at present is not to be commended, for it is extremely expensive. Arbitrations are far more costly than most people imagine. If I were a litigant and had my choice - I am not speaking from the lawyer's stand-point - I would ten times rather have my case decided by the ordinary tribunal than go through the expensive and unsatisfactory course of arbitration. I could name several examples within my own experience where arbitration costs have been immensely greater than those of proceedings in court, even with an appeal.
Mr Harper
- And the proceedings almost interminable.
Mr ISAACS

- Yes, and very unsatisfactory. I must say that a judge with expert evidence before him is the best tribunal to decide the matter. He is not there to do anything more than properly weigh the evidence. If we have a skilled man to sift the evidence, and do it quickly, I think that is all that is required. As a litigant I should prefer the prospect of having a Judge to decide my case shortly, sharply, and cheaply.
Mr. A.
McLEAN (Gippsland). - I must confess that my honorable and learned friend's experience differs from my own. I agree with him that when gentlemen of the long robe are employed to appear in an arbitration, they contrive to make it as expensive as a Supreme Court action, but where the services of the lawyers are dispensed with, as they are in nineteen arbitrations out of twenty, and practical men are chosen, the process is not only very expeditious, but exceedingly inexpensive. I speak from personal knowledge of these cases. I have known many cases in which no charge has been made by the arbitrators. I have acted frequently in that capacity without making any charge whatever, and I know many others who have done the same. The expense is not worthy of consideration. Of all the cases with which I have been associated, only one was referred to an umpire, although an umpire was appointed for each of them. How is it possible for a Judge to distinguish between expert testimony and that of some person who is paid to give evidence to suit his side ? Unless a Judge understands the matter himself, he cannot possibly distinguish between the two. I should not like a question affecting any property of mine to be left to the tender mercies of any Bench upon which there were no experts. Whatever confidence I might have in the honesty and probity of all concerned, and I should have every confidence - I say that without a full and intimate knowledge of the matter it would be utterly impossible for them to arrive at a satisfactory and just decision.
Sir WILLIAM LYNE
- In administering the New South Wales Public Works department for a great number of years, in connexion with which there have been large claims amounting to hundreds of thousands of pounds - claims larger, perhaps, than any that have been connected with the departments of any of the other Australian States - I always favoured the appointment of arbitrators. I must agree with the honorable and learned member for Indi, however, that in most cases the question at issue was settled by the umpire.
Mr A McLEAN
- But then he hears the statements of practical men on each side.
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Sir WILLIAM LYNE
- Quite so. One reason why I was very anxious to have arbitration, if possible, in connection with the department I have referred to was that the only alternative was to go to a jury. I favour the provision in the Bill because it thus does away with trial by jury in these matters.
Mr A C GROOM
- A jury is not desirable in these cases.
Sir WILLIAM LYNE
- If we depend upon the decision of a jury we can never get decisions on the same lines. One jury decides in one way, and another in an opposite direction. In connexion with the large resumptions which took place in Sydney last year, there are various cases before the courts, but it is impossible to obtain uniformity of decision under the jury system. If we can manage it, it is better to obtain the decision of a Judge.
Mr A McLEAN
- I should prefer the decision of a Judge to that of a jury.
Sir WILLIAM LYNE
- Once we obtain the decision of a Judge, that decision will permeate those of other Judges, and will perhaps prevent many cases from going before the court.
Mr Isaacs
- It will settle the rule.
Mr A McLEAN
- Why not give the parties the option of going to arbitration or of appealing to a Judge?
Sir WILLIAM LYNE
- I would refer the honorable member to the Attorney-General. Personally, I do not object to arbitration,

but I think it is a step in the right direction to provide that these matters shall be dealt with by a Judge, without a jury. If 1 had a case of my own, I should prefer to obtain the decision of a Judge.
Mr A McLEAN
- Would the honorable gentleman prefer it to that of a competent valuer 1
Sir WILLIAM LYNE
- I should in many instances. It would depend very much, however, upon the nature of the case, whether I should prefer arbitration or not. I think the discussion is a little previous, and that it would be more appropriate on clause 14.
Amendment agreed to.
Mr GLYNN
- I think the intention of the honorable member who moved the last amendment was to move the insertion of additional words, providing that a case may be dealt with by the Supreme Court of the State in which the land is situated. Might I also point out to the Attorney-General, as a matter for his consideration, that the value to be paid is to be made up of the value of the various interests in the land. I may be wrong, but that seems to me to be a construction that is open on the Bill. If we take the words " owners of the land," which are used in sub-clause (1), and the first words of sub-clause (3) - "Every person or State claiming compensation," we must see that they refer to various interests. The method of ascertaining the value is to take the amount of each person's interest in the property and total it up.
Mr Deakin
- We take the value of the land and divide it between the parties.
Mr GLYNN
- The Bill leaves it open absolutely for the method of computing the value of the land, which I have pointed out, to be adopted.
Mr Deakin
- I will consider the point.
Clause, as amended, agreed to.
Clause 14 -
If within 90 days after the Minister has notified the claimant that his right to any compensation is disputed, or if, within 90 days after the service of notice of claim, the claimant and the Minister do not agree as to the amount of compensation, the claimant may institute proceedings in the High Court in the form of an action for compensation against the Attorney-General as nominal defendant on behalf of the Commonwealth
Mr GLYNN
- I would point out to the honorable and learned member for Northern Melbourne that the words " State court " should be inserted in this clause.
Mr. HIGGINS
(Northern Melbourne).I move -
That after the word "court," line 7, the words "or in the Supreme Court of the State" be inserted.
Sir William Lyne
- The honorable and learned member is not going to give the party the privilege of going either to the High Court or to the State Court.
Mr HIGGINS
- There is no reason why these matters should not be settled in the Supreme Court. I think there is no harm in following what has been done in the Post and Telegraph Bill.
Mr L E GROOM
- It would be better, for the purpose of securing uniformity, if the decision of these matters were left to a Federal Court, and we might follow the wording of section 71 of the Constitution Act, and provide that the appeals should be made to the High Court or such other Federal Court as Parliament might create, or such other court as it might invest with federal jurisdiction.
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Mr Deakin
- That would be widening the provision still more.
Mr L E GROOM

- The language would be general, and would apply to the Supreme Courts or any other courts that might be invested with federal jurisdiction.
Sir WILLIAM LYNE
- I hope the honorable and learned member for Northern Melbourne will not press his amendment in its present form, because I feel that I cannot accept it. I can quite understand his desire that until the High Court is established there should be some court able to deal with any matter that may arise, but I do not think that it should be open either to the States or to individuals to have recourse to the State courts after the High Court is brought into existence, because it must be remembered that these courts will have to deal with matters affecting the States, as well as individuals, as against the Commonwealth.
Mr Higgins
- Surely we can trust the State Judges as well as the Federal Judges.
Sir WILLIAM LYNE
- Then we might as well be without a High Court altogether.
Mr Higgins
- Yes, certainly.
Sir WILLIAM LYNE
- I can understand the honorable member's position if he desires to do away with the High Court altogether, because it seems to me that his amendment is the thin end of the wedge for rendering the High Court unnecessary.
Mr Glynn
- The Minister apparently wants to create a necessity for it by giving the High Court business that does not belong to it.
Sir WILLIAM LYNE
- This business does belong to the High Court. If the honorable and learned member for Northern Melbourne will alter his amendment so that it shall only apply until such time as the High Court is established, it will be free from the objection I now take.
Mr Higgins
- Although I think it would be better to provide for a simple alternative, I am willing to meet the suggestion of the Minister.
Mr. GLYNN
(South Australia).- There was a provision in the Post and Telegraph Bill in the form now approved of by the Minister, but I moved an amendment to make recourse to the State courts alternative at all times.
Mr Isaacs
- Was the State or only the individual concerned as against the Commonwealth ?
Mr GLYNN
- -What does it matter ? Is not the true jurisdiction for a court the place where the property is situated ? What right has any one to impugn the State Court, and assume that there will be perfect morality in the Federal Court ? The State Court and the Federal Court will doubtless be equally free from prejudice.
Mr Isaacs
- Why was the High Court provided for at all ?
Mr GLYNN
- To deal with business that would legitimately go there, and not to be an ornament or to do business which should go to the State courts. There seems to be an intention to create business foi- the High Court which time alone should bring to it.
Mr ISAACS
- I think that the honorable and learned member for South Australia can scarcely mean that it is the deliberate intention of Ministers to create business for the High Court. For federal business we should have the Federal Court, and where the Commonwealth is a suitor, the proper and dignified place for it to appear in is the Federal Court. It was considerations of this nature that led to the adoption in the Constitution of the High Court as one of the institutions of the Commonwealth. Now, it seems to be argued that we do not want such an institution at all, because if the argument is correct in this respect, it is correct in all. I think the Government are right in adhering to their position that whenever the High Court is constituted, application should be made to that tribunal, but I also think that until the High Court is

constituted matters should not be kept at a stand-still, but that power of application should be given to the Supreme Court of the State in which the property affected is situated.
Amendment (by Mr. Deakin) proposed -
That the amendment be amended by the insertion of the words " until the establishment of such coUrt " before the word " in."
Mr. HIGGINS
(Northern Melbourne).I am anxious that we shall not, by a side-wind, make it essential to appoint a High Court before we need it ; and, although I should prefer to have the matter left open in the way I originally suggested, I do not see any strong objection to adopting the proposal of the Attorney-General.
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Mr FOWLER
- Will the adoption of the amendment proposed by the Attorney-General involve dragging"" a man from Western Australia, upon a comparatively small matter, to the High Court in, say, Bombala, in New South Wales %
Mr DEAKIN
- The amendment states that, until the High Court is established, recourse may be had to the Supreme Court of the States, and when the High Court is established, I can assure the honorable member that Perth will not be omitted from consideration.
Mr. GLYNN
(South Australia). - I do not think honorable members ought to rely too much on Ministerial, promises, because we have not got immortal Ministries yet ; and undoubtedly the the intention is, as soon as the High Court is created, to do away with all opportunities for recourse to the State courts. Under this arrangement, if a man in Western Australia has a claim against the Government for land taken from him, he will have to make application for compensation to the Attorney-General, and if there is any dispute as to the amount, the case will have to go to the High Court of Australia, which may be sitting somewhere in New South Wales.
Mr DEAKIN
- Honorable members will be perfectly safe in agreeing to the amendment as I propose to alter it. It is proposed that until the establishment of the High Court, appeals may be made to the Supreme Court of the State in which the case arises. We cannot have a High Court without passing a measure providing for it, and the Bill must provide for just the kind of court that the majority of honorable members approve. It is possible that provision will be made in that Bill for the continuance of certain appeals to the courts of the States, and it will probably be decided that the justice shall be administered by the High Court in each State of the Commonwealth without putting claimants to any inordinate expense.
Mr Glynn
- That can only be done by providing for circuits.
Mr DEAKIN
- It was done in the United States by means of circuits.
Mr Glynn
- That is a very expensive system.
Mr POYNTON
- I am quite aware that while we are waiting for the High Court, the Supreme Courts of the States will be able to deal with appeals, but after the High Court is established we shall have to take the whole of our business to that tribunal. 16 i 2
Mr Deakin
- But the High Court has yet to be established, and honorable members can make their own conditions.
Mr POYNTON
- Still, I think it would be better to extend to claimants the privilege of appeal to the State Courts in a general way, I fear that the establishment of the High Court of Australia, and of other tribunals which it is proposed to set up, will bring about a lot of trouble in connexion with the federation.
Mr Deakin
- It will cost us more to do without the High Court than to have it.
Mr POYNTON

- Even the lawyers differ in regard to that matter, and I ask the honorable and learned member for South Australia to adhere to his amendment.

Mr A McLEAN

- I do not object to limiting the operation of this clause to the period that intervenes before the establishment of the High Court, although I should have preferred to have seen it carried in the form originally suggested by the honorable and learned member for Northern Melbourne. But I wish to ask the Attorney-General if it is necessary in disputes involving only a small amount say £80 or £100 - for the parties interested to go before the Supreme Court or the High Court of Australia 1 I have never known of any trivial case being brought into the Supreme Court. The police court and the County Court are tribunals which are specially intended to deal with such cases. I see no reason why every dispute in which an amount of £50 is involved should come before the High Court, especially as it is very likely that there will be far more small properties taken over by the Commonwealth than large properties.

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Sir WILLIAM LYNE

- There is a good deal in the remarks of the honorable member for Gippsland, and I agree that it would be absurd to take a paltry £30 or £50 case into the High Court. If I were administering the department as I am now, I should direct my officers in such cases to meet the individuals concerned, and though we could not legally appoint a tribunal to deal with the matter in dispute, no doubt we could arrange to get the opinion of two persons whose decision would be acceptable to the parties. But if the honorable member will allow the matter to rest now, I think we can arrange that only cases in which a certain minimum sum is 'involved shall be dealt with by the High Court.

Mr. HIGGINS

(Northern Melbourne). - I have a strong sympathy with the view put forward by the honorable member for Gippsland. It is absurd to apply the whole of the complicated and expensive machinery of the Supreme Court or of the High Court to a paltry claim. I think the honorable member also alluded to his desire to allow more liberally for arbitration. In Victoria, to issue a writ costs only1s., whereas to issue a summons in the police court costs 2s. 6d., so that in reality it is cheaper to start proceedings there in the first instance. I think that there ought to be power given to the Judge, as soon as a writ is issued, to refer it to some arbitrator, who could settle it in a simple and inexpensive way. I do not think it ought to be compulsory for a claimant to have his case fought out before a court. We shall not be doing ill by leaving it optional with some authority to say whether any particular case shall go before the court or not. My experience teaches me that arbitrators frequently regard themselves very much as advocates, and ultimately the matter in dispute is generally decided by the judge or umpire. I remember appearing before arbitrators and an umpire some years ago in a certain case, in which they reserved their decision. I went to Hobart some time after, and as I was walking along the street a carriage stopped, and out jumped our arbitrator, who ran up to me and shook me by the hand warmly, remarking, "

Mr. Higgins,

I am happy to say that we have won that case." Any one who has had experience in these matters will bear me out that the amount of frivolous and unnecessary evidence taken before arbitrators is much greater than that taken before a Judge. I will support the amendment to clause 15 so as to avoid making it compulsory that all matters shall go before a Judge.

Amendment of the amendment agreed to.

Amendment, as amended, agreed to.

Clause, as amended, agreed to.

Clause 15 (Justice to determine compensation).

Mr. DEAKIN

(Attorney-General). - May I say to the honorable member for Gippsland that I refrained from saying anything before with regard to arbitration, because I could not but feel that as a member of the profession my statements might be accepted with some deduction. My own experience - however short it may have been - was for a considerable time largely in connexion with arbitration cases. That experience entirely confirms the statements of my two professional friends. Those arbitration cases were longer, more expensive, and much more unsatisfactory than they would have been had they been conducted before a Judge without a jury. At the same time I admit that where one can get parties to a dispute who are

sufficiently near to an agreement, or who have a sufficient knowledge of two men in their own way of business to place themselves in their hands, no better, cheaper, or more expeditious method of settling difficulties can be obtained. But that is not the arbitration that we know, or that can be expected under this Bill. In this measure it is the Commonwealth against the individual. The honorable member for Gippsland knows from experience that when the State is concerned a very different kind of claim is made to that which is set up between individuals. In this case it is the State that has to be protected, because the State is not treated as one neighbour would treat another. We have to assume, of course, that in the case of small amounts there will be an agreement, and it will be better to make provision to enable small claims to be settled expeditiously without the claimants being compelled to go into court. There is bound to be of a large margin between what is asked and what is offered ; and then there must be the professional assistance which is thought so disastrous by the honorable member. Under the circumstances, if we agree to introduce some provision by a separate clause, I shall be prepared to make the limit £250, under which settlement may be arrived at in some simple manner. W e shall then be able to leave the rest of the Bill as it is.

Mr A C GROOM

- Cannot the claimant be given the option of going to arbitration?

Mr DEAKIN

- I. shall put the clause in a simple form, and possibly suggest the judge of an inferior court or a police magistrate. We must remember that these are not two private people who are disputing, though I have no objection to arbitration then.

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Mr A McLEAN

- I was never connected with an arbitration between two private people. In every case the State was one of the parties.

Mr DEAKIN

- I am afraid that the honorable member must not take his own experience as being very common, or as altogether an absolute guide for us. However, I have no objection to cases under £250 being settled in the way suggested.

Mr. A.

McLEAN (Gippsland). - The cases to which I have referred were cases between private individuals and the State. When the Attorney-General speaks of there not being a large margin between the amounts, I can tell him of one case where the claim was for £950 and the State, after having the land valued by its own valuer, offered £460, showing considerably more than 100 per cent, difference. In that case and a number of others where the margin was quite as wide, and much larger amounts were involved, the course pursued was for the Government to appoint some person in whom they had thorough confidence as a trustworthy judge of land, and for the owner of the land to appoint a similar person. These two persons did not sit down and take evidence, but visited the land, and, going carefully over it, appraised the value for themselves. They acted just as two principals, or just as purchaser and seller would act, and in nine cases out of ten they agreed without reference to the umpire, although they always took him with them in case a reference should be necessary. I have been connected with one or two cases in which evidence was taken, but what I heard satisfied me that evidence in such cases is of little value as a rule. Each person brings the witnesses who will make the largest demand, and I have heard a person estimate £25 an acre as the value of land worth possibly £5 an acre, and give as his reason that it was a beautiful site, where persons could tie up their horses and have picnics. It is very much better to get practical men to settle these matters as principals would settle them, because a person who is not a judge or an expert may be guided by the majority of the witnesses, which is not a proper way to arrive at the value of land. In most of the other cases to which I have referred, both sides have been satisfied, and the costs have been small, if anything at all.

Mr Deakin

- I will draft a clause providing that a claimant may, if he chooses, have an arbitrator for sums under £200.

Mr PIESSE

- I am very glad to hear what the honorable member for

Gippsland has said, because I know arbitrations which have not, in every case, ended so satisfactorily.

The arbitrator often regards himself as practically an advocate for the man who has chosen him, whereas he ought to be in the position of a judge. If the Attorney-General has a course to propose for limiting the amount to be brought within the inferior jurisdiction, the claimant might be left at liberty to go to a higher court if he pleases.
Clause agreed to.
Clause16 (Costs).
Mr A C GROOM
- If the Government valuation is sustained the claimant has to pay costs, but if any amount over the Government valuation is given, then the Government must pay the costs. There should at all events be some limit placed.
Sir WILLIAM LYNE
- I quite agree with what the honorable member for Flinders has said. I shall postpone this clause, and in the meantime ask the Attorney-General to draft a provision on the lines suggested by the honorable and learned member for Parkes to-night.
Clause postponed.
Progress reported.
DISTILLATION BILL
Bill returned from the Senate with amendments.
EXCISE ON BEER BILL
Bill returned from the Senate with amendments.
PRINTING OF PAPERS
Ordered
(on motion by
Mr. Mahon)
-
That, in the opinion of this House, every paper, petition, return, or other document, except Bills, presented to Parliament and ordered to be printed, should, when printed, bear on the face thereof a statement showing - (a) Cost of preparation ; (b) Number of copies printed ; and (c) Approximate cost of printing and publishing the same.
MAIL AND PASSENGER TRAFFIC
Mr. V.
L. SOLOMON (South Australia).I have a motion on the paper which I think the Prime Minister might allow to go unopposed.
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Minister for External Affairs
Mr BARTON
. - I do not think I can entertain the proposal of considering the various matters involved in the motion of which notice has been given by the honorable member for South Australia, (Mr. V. L. Solomon) without further consideration. I hope my honorable friend will give me an opportunity of further considering his motion. I should not like to plunge the Commonwealth, on the eve of the Tariff discussion, into the expenditure which might be involved in preparing the return for which the honorable member asks.
Mr V L SOLOMON
- I think I have a right to have my motion proceeded with.
Mr SPEAKER
-The honorable member has the right to proceed with his notice of motion if he pleases.
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Mr V L SOLOMON
- I move-
That there be laid before this House a return showing -
The mail and passenger traffic between Australia and Great Britain and to and from the intermediate countries : showing separately the amount of subsidy paid per annum during the three years ended 31st December, 1900, by the States in the Commonwealth for the carriage of mails and parcels post as follows : -

To and from Great Britain,via West Australia and Suez. {b) To and from Great Britain,via Queensland ports, Torres Straits, and Suez.
To and from Great Britain,via San Francisco.
To and from Great Britain, via San Francisco and Columbia and the Canadian Pacific Railway.
To and from the Continent of Europe by all routes.
To and from places east of Suez and the far East, rid West Australia and Ceylon.
To and from places in the far East, via
Queensland and Torres Straits.
To and from Singapore and the East, via Fremantle and North-west Australian ports.
Where contracts are in existence for the carriage of mails and parcels post made conjointly by the Imperial authorities in respect of the routes set forth above, the amount paid per annum during the period named by the Imperial authorities as their moiety of the respective contracts as follows : -
Name of company or service,
Date of contract.
Period of contract.
Subsidy in full for yearly or such other periodica] service.
The amount paid by the different Commonwealth States in respect of such contract.
The amount paid by the Imperial authorities in respect of such contract.
The amount (if any) paid any foreign or Indian Post-office in respect of such contract.
The time allowed by such contract to carry the mails between the terminal ports named therein.
The rate of speed per hour or day fixed by such contract for the steamers employed thereunder.
Separately, the annual immigration into and emigration from each State in the Commonwealth during the three years ended 31st December, 1900, as follows : -
The number of males and females from and to Great Britain, via Suez.
The number of males and females from and to Great Britain,viaCape of Good Hope.
The number of males and females from and to Great Britain, via America.
The number of males and females from and to ports in Europe other than Great Britain, via Suez.
The number of males and females from and to ports in Europe, via America.
The number of males and females from and to Singapore and the Straits Settlements, aid Ceylon.
The number of males and females from and to Indian ports, via Ceylon,
The number of males and. females from and to ports in the far East, via Queensland and Torres Straits.
The number of males and females from and to ports in the far East, via Fremantle and North-west Australia.
In those States where no passenger boats ply direct with the countries named in the above list, and persons join or leave the steamer in another State where, in all likelihood, such traffic is connected in the records of arrivals and departures at the principal port the steamer touched at, such State having no direct passenger traffic is not required to furnish information.
*(Note. - Not to include Ceylon passengers unless transfers from and to Indian ports.)
Considering that this motion has been on the notice-paper for some three weeks at least, during which period it was certainly competent for the Government to ascertain whether there was any reasonable objection to a return of this nature, I am a little surprised at the attitude of the Prime Minister. It will be within the recollection of the House that some few weeks ago I moved a resolution, which has since been delayed owing to the pressure of Government business, in reference to the transfer of the Northern Territory to the Commonwealth. In my remarks upon that subject, I attached special importance to the effect which the trans-Siberian railway would have at no very distant date upon traffic to Australia. I alluded, also, to the geographical position of Port Darwin, and particularly to the completion of the overland line between Oodnadatta and Pine Creek. I pointed out the important bearing it would have on the whole of
Australia and Australia's connexion with Europe in the near future. Although at a first glance the details of this return may appear to involve a large amount of work, it. was only necessary for the Postal department to have looked into it, or for the Government to have courteously considered this notice of motion that has been on the paper for some weeks, in order to see that the information could be easily obtained, that it is, or ought to be, in the possession of the departments of the various States,

Mr JOSEPH COOK
- Does the honorable member expect the Government to read a notice of motion like this?
Mr V L SOLOMON
- I am young enough in politics to believe that if a question is of sufficient importance to be placed on the notice-paper, it is the duty of the Minister concerned to look into it. If this motion had been tabled by some honorable member sitting in another part of the House, the result might have been different, and more courtesy might have been extended.
Mr Barton
- That is a very unkind thing to say.
Mr V L SOLOMON
- It is justifiable when the Prime Minister admits that a matter of this kind has not received his attention, or even that of any of his Ministers.
Mr Barton
- The honorable member knows that it has received a certain amount of attention, because I pointed out that it contains some 30 heads. That takes some counting. ' I find I was wrong to a slight extent, because there are only some 27 heads.
Mr V L SOLOMON
- I would ask the concurrence of the House that I should obtain this information. It will be of extreme value to those who are taking on interest in the future of our mail services. I do not expect to get this information in a day, or even in a week or two, but I do expect that a reasonable attempt will be made to obtain it, and upon it I intend to take action.
Mr. BARTON
(Hunter- Minister for External Affairs). - I have endeavoured to relieve the Speaker from the onerous task of reading the whole of this motion by suggesting that it should be taken as read. I think my honorable friend, the member for South Australia, will not, on consideration, adhere to his charge that if his motion had come from another quarter of the House it would have been acceded to readily, because he must admit that this is a far more extensive return than has previously entered' the minds of any honorable member to move for. There are 26 or 27 headings in the motion, and I would appeal to the honorable member not to go on with it to-night. I am risking my right of speech. The honorable member states that it only involves information that is in the hands of the Postal department. If he has any recollection of his own motion, he will know that in the second heading it involves the amount paid per annum during a certain period by the Imperial authorities as their moiety under the respective contracts during three years, and recent returns presented to the House have shown the impossibility of obtaining any such information without a very extended investigation. The whole thing will cost a lot of time and money. It will not help the honorable member in any of the purposes he has in view, and although I am loth to oppose the motion, I shall feel compelled to do so, unless the honorable member will consent to an adjournment to allow the matter to be looked into. It could never have been expected by him that this motion would come on to-night. There was one which went outside the category of unopposed motions, and I explained to the honorable member in charge of it, that if he would move it to-night with a slight amendment, I should not oppose it, so that it is by a pure accident that the honorable member for South Australia has been able to bring this motion on. I think he will consent to the debate being adjourned. I am sure it will be in the interests of his own motion that he should do so. With a view of dealing with the matter in the most peaceful way, I move -
That the debate be now adjourned.
Motion agreed to; debate adjourned.
ADJOURNMENT
Tariff Papers for the Press.
Motion (by Mr. Barton) proposed -
That the House do now adjourn.
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Mr WATKINS
- I would ask the Prime Minister whether he will consider the advisability of providing members of the Commonwealth press with the Tariff proposals when they are available to the public?

Minister for External Affairs
Mr BARTON
. - Instructions, I understand, have been given already to the officers to supply at the proper time, and confidentially, as much information as possible to the principal organs in the capitals of the various States, so that the ordinary information available in the case of a State Tariff being brought forward will be furnished on this occasion.
Question resolved in the affirmative.
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22:45:00
House adjourned 10.45 p.m.