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1901-09-11

Senate.

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

#### PETITION

Senator CHARLESTON presented a petition from 485 citizens of South Australia praying that the Senate would give effect to proposals for the exclusive ownership and conduct of the retail trade in intoxicants in the federal capital.

Petition received, and read.

#### PAPERS

Senator DRAKE laid upon the table the following papers : -

Report of conference of naval officers assembled in Melbourne.

Report relating to the defence force of the Commonwealth.

Return to an order of the Senate showing - (1) the number of females employed in the Federal departments in each State ; (2) the number employed in the Post and Telegraph department in each State ; (3) the number employed in the Post and Telegraph department at Melbourne, Sydney, Adelaide, Hobart, and Perth, respectively.

Ordered to be printed.

#### THE PRESIDENT OF THE UNITED STATES

The PRESIDENT

- Before calling on the business of the day I have to report that, as soon as practicable after the receipt of the news of the dastardly attempt to assassinate the President of the United States, I sent in the name and on behalf of the Senate the following message : -

To the President of the United States.

Sincere sympathy from the Senate of Australia.

C. Baker,

President

Vice-President of the Executive Council

Senator O'CONNOR

. - Mr. President, I am sure that I am expressing the opinion of the Senate when I say that we entirely indorse your action, and appreciate the promptitude with which you acted. I hope that the progress of the President of the United States towards complete recovery will be such that, in the course of a few weeks, I may be able to ask the Senate to send another message of a congratulatory character to him.

#### ORDER OF PRECEDENCE

Senator CLEMONS (for Sir Josiah

Symon) asked the Vice-President of the Executive Council, upon notice -

Has the Right Honorable the Prime Minister been in communication, or had correspondence, with the Right Honorable the Premier of New Zealand in relation to any question of precedence, or to the order of precedence existing or proposed in that colony, or to any protests or objection by the Chief Justice of that colony with respect to such order of precedence, or any question of precedence generally ?

If so, is there any objection to lay the correspondence on the table of the Senate ?

Senator O'CONNOR

- No official correspondence on this subject has taken place.

#### QUESTIONS

#### PUBLIC SERVICE REGULATIONS

Senator DOBSON

asked the Postmaster-General, upon notice -

Does the Postmaster-General intend to inquire into five breaches of the regulations issued under the Public Service Act of Victoria, as set forth by the Argus of the 2nd inst., upon the authority of the Deputy Postmaster-General, alleged to have been committed by certain officers referred to as 1, 2, 3, 4, and 5 in the said newspaper, and reprimand or punish by fine such of the officers (if any) who shall at such inquiry be proved to have broken any of the regulations ?

Does the Minister propose to advise the Governor-General in Council to make regulations to insure the

good conduct and discipline of all officers of transferred departments pending the issue of regulations under any Public Service Act which may be passed, and in such temporary regulations will he provide that any officer applying or making complaint to any person other than his Minister (and then only through the permanent head of his department) concerning his position in the service or any matter in which he is personally interested, shall be punishable for a first offence by a fine, and for a second offence by disrating and consequent reduction of salary ?

Will the Minister table a copy of the report furnished by the Deputy Postmaster-General in reference to his published statement, and of all correspondence relating thereto ?

General, Queensland

Senator DRAKE

The answers to the honorable senator's questions are as follow: -

Every case properly brought under the notice of the Postmaster-G general will be dealt with on its merits. It is not considered desirable or necessary to make any new regulations pending the passing of the Public Service Bill.

The papers are ready, and will be laid on the table to-morrow if the Senate desire it.

EXCISE BILL

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Senator PULSFORD

asked the Vice-

President of the Executive Council, upon notice -

Referring to the statement made by the Vice-President of the Executive Council, on loth August, in reply to a question by Senator Pulsford, that it was the intention of the Government to bring in a machinery Bill, or Bills, dealing with excise on tobacco and other commodities before introducing the Tariff, is this still the intention of the Government, and, if so, do the Government propose to carry such Bill or Bills through all their stages before introducing the Tariff?

Senator O'CONNOR

- Every effort will be made to legislate in the direction indicated before the introduction of the Tariff.

PRODUCTION OF RETURN: INDEX TO CONSTITUTION

Senator PULSFORD

asked the Vice-President of the Executive Council, upon notice -

With reference to the return ordered on 26th July to be prepared and laid on the table of this House, dealing with the population figures disclosed by the census its affecting the quota for the House of Representatives, is there any reason why this return should be delayed, and will the Government give instructions that will secure its immediate preparation and presentation ?

With reference to the resolution of the Senate approving the preparation of an index to the Constitution, have any steps yet been taken to carry this resolution into effect ?

Senator O'CONNOR

- The answers to the questions are as follow : -

The chairman of the conference of Statisticians has been asked through the Premier of New South Wales to supply the return, but it is not yet to hand. I will endeavour to have it expedited.

The preparation of this index has been retarded by the extreme pressure of business, necessitating the individual attention of officers, but as soon as the pressure lessens the index will be prepared.

NEW GUINEA

Senator CLEMONS

asked the Vice-President of the Executive Council, upon notice -

When does the existing arrangement between the Imperial Government and the State Governments of Queensland, New South Wales, and Victoria, respecting the government of British New Guinea terminate ?

Is the Commonwealth Government in communication with the Imperial authorities respecting the cost of carrying on the government of British New Guinea on termination of existing arrangements ?

If so, will the Vice-President of the Council inform this House on what terms it is proposed to continue defraying the expense of the government of British New Guinea in the future; whether as a possession under the immediate supervision of the Commonwealth or otherwise ?

Senator O'CONNOR

- The answers to the honorable senator's questions are as follow : -

There is no definite arrangement in force at present. The agreement entered into in 1888 between Great Britain and the contributing colonies expired in 1898, but affairs have been conducted since that date on the lines of the agreement.

The Commonwealth Government is in communication with the Imperial authorities on the subject, and the element of cost is dealt with in despatches.

As the negotiations are incomplete no statement as to terms proposed can be made, but as soon as a definite understanding on the subject is arrived at the papers will be laid upon the table of the Senate.

DIVORCE BILL

Bill presented by Senator Dobson, and read a first time.

CUSTOMS BILL

Senator O'CONNOR(New South Wales - Vice-President of the Executive Council. - I move -

That the Bill be recommitted for the reconsideration of clauses 50a, 50b, 50c, 50d, 50b, 122, 123, 124, and 219.

I have had the clauses which were inserted on the motion of Senator Stewart amended in such a way as will preserve them in all their substance and enactment. I have put them into the form of the rest of the Bill, the amendments being merely drafting amendments. In clauses 122, 123, and 124 - the ships' stores clauses - I have had some verbal amendments made, and propose to alter the order of them in such a way as to make their meaning absolutely clear. I have put them in a more satisfactory position, so far as drafting is concerned, than they were in before.

Senator Sir FREDERICK SARGOOD

-SARGOOD (Victoria). - I ask that clause 50 be recommitted for further consideration, as I have some important matters to bring before the committee.

Senator PULSFORD

- I ask that clause 71 be recommitted.

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Senator O'Connor

- I do not object.

Question, amended accordingly, resolved in the affirmative.

In Committee -

Clause 50a -

All tea imported as merchandise into the Commonwealth shall be examined by any officer of Customs appointed for the purpose by the collector.

Vice-President of the Executive Council

Senator O'CONNOR

. - This and the following four clauses introduce machinery for the purpose of making it compulsory on the Government to take samples of all teas, to submit them to a Government analyst, and to deal with them accordingly after certain notice is given. A good deal of that machinery was unnecessary, because it existed in the Bill as drawn, while another part of it was new. I have drafted some amendments which do not affect the meaning of the clauses in any way, but bring them into conformity with the general scope of the Bill. It will be remembered that clause 49 provides -

The following are prohibited imports : -

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

So that tea coming within that description is a prohibited import. In place of these five clauses I propose to insert a new clause, which carries out Senator Stewart's intention, I believe, and which will be found to be more in accordance with the general scheme of drafting of the Bill and more concise. I ask the committee to negative clause 50a. I intend also to ask the committee to negative clauses b, c, d, and e, with a view to the substitution of the following : - 50a. As to all tea imported -

Samples shall be taken without payment and examined by the collector.

Unless the collector is as a result of the examination satisfied that the tea is not a prohibited import he shall submit the samples for analysis to an official analyst appointed by the Governor-General for the

purposes of this Act.

If as the result of the analysis it appears that the tea is a prohibited import, it shall after compliance with the next succeeding paragraph be dealt with accordingly.

Notice shall be given to the owner of the report of the analyst if the tea is thereby shown to be a prohibited import, and the owner shall be allowed fourteen days after the receipt of the notice to satisfy the collector that the tea is not a prohibited import.

Any tea not complying with the prescribed standard" of strength and purity shall be deemed unfit for human use.

Senator STEWART

- The Minister says that the clause he has drafted is more in harmony with the general character of the Bill than the clauses I submitted. I admit that, it is, but I am doubtful as to whether it carries out my intention so effectively. He says it does, and he ought to know. In clause 50b, as passed, it is provided - For the purpose of such examination samples of all tea so imported shall be taken without payment by any such officer, and he may cause the same with all convenient speed to be further examined by an analytical chemist appointed as hereinafter provided.

Although the word " may " is used instead of the word "shall," I consider that the clause is mandatory, so far as the officer of Customs is concerned : he is expected to have each sample analyzed. But in the new clause it is provided that the collector shall submit the samples for analysis to an official analyst, if he is not satisfied that the tea is not a prohibited import. I do not know that it is contemplated that the collector shall be an expert, able to tell at sight whether tea is exhausted or whether it is adulterated with spurious leaf or exhausted leaves, or whether it is unfit for human use or unwholesome. I think that fact can only be ascertained by analysis, and if Senator O'Connor would make it imperative that the samples should all be analyzed, I would not have any objection. My intention was, and is, that each sample of tea should be analyzed by a skilled person appointed by the Government for that purpose. The proposed new clause apparently does not carry out that idea, and I cannot say that it is altogether acceptable to me.

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Senator CLEMONS

- The new clause which has been suggested by the Vice-President of the Executive Council distinctly fails to carry out Senator Stewart's intention, which is very clearly expressed in the clauses as they stand in the Bill. What he desired was to secure that all tea should be initially examined by an expert, and that if the expert decided that in his opinion the tea was of a suspicious character, it should be forthwith sent for analysis by an analytical chemist. The new clause would certainly fail to carry out that idea, because under it no analysis can be made unless the collector sends the tea for analysis. The collector might, however, accept every sample of tea sought to be brought into the Commonwealth. Consequently, none would be analyzed. Again, it cannot be expected that the collector will be an expert in tea. Therefore, we should provide that the tea in the first instance shall be examined by an expert appointed by the Collector of

Customs, who. shall at his discretion send the tea to be analyzed. That idea could be carried out by inserting the following words in paragraph (a) of the new clause : -

Samples shall be taken without payment, and examined by an expert to be appointed by the collector.

Then, in paragraph (b) a provision could be inserted enabling the collector to send any tea for analysis.

Senator O'CONNOR

- I said that the new clause would simply carry out the intentions of Senator Stewart, and that it undoubtedly will do. It was not clear from clause 50c that the taking of the sample would be compulsory, and the examination of the tea afterwards was a matter for the collector himself to determine. I have faithfully carried out that intention. I am particular in stating that, because, when I, or any one else occupying my position, undertakes to redraft clauses which have been carried by the committee, he is bound to do it with all loyalty to the expressed wish of the committee. I only wish to make it plain that I have carried out the wish of the committee as expressed in these clauses in every particular. The question is whether the committee is satisfied that the clauses as originally carried at the instance of Senator Stewart are sufficient, and whether it is necessary to make it compulsory that all tea shall be examined by an analyst.

Senator Clemons

- By an expert.

Senator O'CONNOR

- There are two questions. Senator Clemons makes a proposal which would not be nearly as onerous as that of Senator Stewart - that all tea shall be examined by an analyst. I do not know whether the proposal that tea shall be examined by an expert involves anything more than is actually done already, because, at present, the person sent to examine tea on behalf of the Customs is an expert in tea. The Customs would not send to examine tea a man who was an expert in kerosene or sugar.

Senator Clemons

- The honorable and learned senator has completely altered clause 50a so as to leave the examination to be carried out by the collector, and not by an officer of the collector.

Senator O'CONNOR

- The collector, by the interpretation clause, means any officer, and it may be an officer appointed for this particular purpose.

Senator Clemons

- It may, but it may not be.

Senator O'CONNOR

- The interpretation clause defines a collector as including -

The comptroller and any Collector of Customs for the State and any principal officer of Customs doing duty at the time and place and any officer doing duty in the matter in relation to which the expression is used.

The person ordinarily employed to examine tea would be an expert. The question now is whether an analyst should necessarily, and in all circumstances, examine the tea or not. Probably the greater portion of the tea imported is tea as to which any expert could tell at once whether it was or was not prohibited. It would seem to be a useless expense to submit that class of tea to analysis. I quite agree that in view of what the committee has done, it is necessary, where there is the least doubt about tea, that it should be submitted to analysis, and I have no objection to the amendment suggested by Senator Clemons. But, at the same time, that might put the Customs in the difficulty that the expert might be outside the authority of the Customs. We do not want to do that. What is really wanted is that the collector may appoint a Government officer who will be an expert, and who, if he finds that there is nothing requiring analysis, will pass the tea as a matter of course. If he finds that a sample of tea requires analysis he will pass it on to the analyst. Therefore, though I do not see very much objection to Senator Clemons' suggestion, I am disposed to think it would narrow the operation of the clause if any words were used making it compulsory to appoint an outside person, who might or might not act in the interests of the importer; whereas, if the new clause is agreed to, the expert will be a Government officer. The clause will secure every safeguard and carry out the wish Senator Stewart has at heart.

Senator PEARCE

- I agree to a large extent with the Vice-President of the Executive Council in regard to the effectiveness of the amendment upon clause 50a. But, with regard to the remainder of the clauses, I doubt whether it carries out Senator Stewart's intentions as effectively as the clauses standing in the Bill.

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Senator Sir FREDERICK SARGOOD

- We must all sympathize with the object of Senator Stewart as expressed in the clauses passed by the committee and now being sought to be amended on Senator O'Connor's motion. For many years past the practice has been for the expert in the first instance to examine all tea sought to be imported. In some cases it is not necessary to do more than that. In the case of some shipments, there is an accompanying certificate from experts or analysts at the port of shipment, and that certificate satisfies the collector. But if the collector, having a report of the expert before him, finds that there is cause for further action he can send the tea to an analyst. Judging from a good many years' experience, my own feeling is that the clause, as drafted by Senator O'Connor, will fully meet the case.

Senator PEARCE (Western Australia). - Clause 50c, as it stands in the Bill, provides a very effective manner of dealing with prohibited imports, whereas the amendment proposed by the Vice-President of the Executive Council only provides that prohibited imports cannot be landed at a particular port. Clause C provides that if tea is unfit for human food it may be forfeited and destroyed. May it not be possible for a

shipment of tea to fail to pass an expert at Adelaide and then be brought to Melbourne or some other port and be admitted by the expert? In what manner is it provided that tea which is not allowed to be imported at one port can be effectively stopped at all other ports 1 I certainly think that if tea is condemned by experts as being unfit for consumption it ought to be forfeited and destroyed.

Senator Sir Frederick Sargood

- It would be, under clause 220.

Senator PEARCE

- I do not think that clause touches the point. It does not give power to forfeit all tea deemed by an expert to be injurious to health.

Senator Playford

- It is bound to be forfeited under clause 220, because of its being a prohibited article.

Senator O'CONNOR

- Clause 49 provides that -

The following are prohibited articles : - and then paragraph (e) says -

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

If Senator Pearce will look at clause 220 he will see that it is there provided that -

The following goods shall be forfeited to His Majesty.

And paragraph (b) mentions -

All goods imported which are prohibited imports.

The exceptions do not include condemned tea. So that it appears that condemned tea is a prohibited import, and as a matter of course becomes forfeited. Under Senator Stewart's clauses proceedings for forfeiture have to be taken, but according to the Bill prohibited articles are prohibited as a matter of course, and the owner has to bring an action to prove that they should not be forfeited.

Clause negatived.

Clauses 50b to 50e, inclusive, negatived. New clause 50a agreed to.

Clause 71 -

Goods unshipped and landed under a collector's permit shall be placed by and at the expense of the master or owner of the ship from which they were unshipped in a place of security approved by the collector, and shall until lawfully removed therefrom be at the risk of the master or owner of the ship as if they had not been unshipped.

Senator PULSFORD

- I move -

That the following words be added to the clause : - "but such liability shall not extend beyond seven days."

The clause requires that goods which have been landed under a collector's permit shall be at once placed in security at the risk of the ship. It is quite right that if goods are landed sooner, perhaps, than the conditions of the bills of lading require, they should be landed at the risk of the ship. But the clause as framed continues that liability much longer than the bill of lading would do. It is not necessary and proper that the liability should be so continued. Both the owner of the goods and the owner of the ship ought to be kept in their relative positions ; and under the clause as it now stands the ship would be compelled to warehouse the goods, and then if it did not suit the owner to take possession of them for twelve months, they would remain in the warehouse at the risk of the ship-owner the whole of that time. My amendment would make the clause operate fairly. Seven days, in 99 cases out of 100, will exceed the limits of time required. As the clause reads, it would be simply unfair to the owners of the ship, and it has created a great deal of dissatisfaction.

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Senator O'CONNOR

- I do not consent to this amendment, because it seems to me it would be a very arbitrary way of limiting the liability. There may be cases in which the liability ought to extend beyond seven days. As the honorable senator is aware, the bill of lading settles the right of the owners of the goods and the master of the ship in regard to the landing of the goods, subject always to the laws of the port. The only cases in which clause 71 could be applied at all are. cases in which, for some reason or another, the entry has not

been passed for goods. The ship-master may want to get the whole of his cargo out. He does not wait until entries are passed, but puts all the goods out and leaves the entries to be passed afterwards.

Senator Ewing

- He is not bound to do it ; he does it for his own convenience.

Senator Sir Frederick Sargood

- And possibly for the public convenience.

Senator O'CONNOR

- It may be so, but his way of keeping himself right is to keep the goods in his ship until the consignee comes for them, or the time has elapsed during which the consignee may come for them. After that time the ship-master can put the goods over the side at the risk of the consignee. As Senator Ewing has said, it is really for the benefit of the shipmaster that this power is allowed. Having put goods over the side, it depends upon the contract between him and the owner of the goods whether that is considered delivery or not. If it is delivery under the bill of lading, this proposal will not alter the liability; and if it is not delivery, the provisions of the clause will apply. I cannot see my way to accept the amendment, because it seems to me the circumstances under which the liability continues depend really on what the captain of the ship has done, and the circumstances under which he has put the goods out, and upon what the owner of the goods has done. We cannot lay down a hard-and-fast rule that, after seven days, no matter what the circumstances may have been, the captain shall be no longer responsible for having put goods out on the wharf. It will be very much better to leave the clause as it is.

Senator PULSFORD(New South Wales). - As has been stated by Senator O'Connor, I quite grant that the landing of goods under the collector's permit is in all cases for the convenience of the ship ; but what I claim is that the liability on the ship ought not to continue beyond the period of liability which already exists according to the bill of lading. Goods being landed, the liability for them should fall upon the owners when the period has expired during which under the bill of lading the liability for them rests upon the ship. In case of a parcel of goods arriving where the consignee decides that he will dispute delivery and will not accept the goods, they will be in the warehouse, and according to this clause they may remain in the warehouse for any length of time, and during the whole of the time at the liability of the ship, which really ought not to have any responsibility in the matter beyond what is due under the clauses in the bill of lading. I therefore again ask the committee to consider the necessity of adding the words I suggest. The clause as drawn has created a great deal of comment - in fact, so much as to cause some ship-owners to go to the extent of cabling to London on the subject.

Senator MACFARLANE(Tasmania).Some limitation ought to be placed upon the liability of the ship-master. Supposing goods are landed which are perishable products, and a dispute arises between the buyer and the seller as to the delivery of them, is the ship to be responsible for the goods while that dispute is in process of being settled 1 In a very great many of these cases the goods are discharged for the convenience of the public. Very often, in order to get the goods underneath, it is necessary that the goods in the upper part of the ship shall be landed ; and it is very hard to attach this responsibility to the captain of a ship indefinitely. I think that a limit of seven days, or some such time, should be provided after which the responsibility of the master of the ship should cease.

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Senator Sir FREDERICK SARGOOD

- If we take the case submitted by Senator Pulsford, a captain lands goods for his own convenience on the wharf, and there is some dispute between the captain and the owner of the goods. The captain is naturally anxious to get a clean delivery as quickly as possible. If the owner of the goods says - "No, I refuse delivery, the goods have been damaged by stowage," all that it would be necessary for the captain to do in such a case would be to prolong the dispute beyond seven days, and then the owner of the goods would be out of court altogether, because under the amendment suggested the captain would then be relieved of all responsibility.

Senator Pulsford

- No. His bill of lading would render him liable.

Senator Sir FREDERICK SARGOOD

- I am aware of that, but the wording of the amendment is that the liability shall not extend beyond seven days, and that means something or nothing.

Senator Pulsford

- - That means the liability to the Government.

Senator Sir FREDERICKSARGOOD. The clause says until they are lawfully removed from the place of security they shall be at the risk of the master of the ship, but the honorable senator steps in with his amendment and says this liability shall absolutely cease at the end of seven days. I do not think that could have been intended, for while it may be of great advantage to the captain of a ship to be relieved of responsibility by continuing a dispute for seven days it would not be in the interests of the public or the owner of the goods.

Senator PULSFORD(New South Wales). - Senator Sargood is under some misapprehension in regard to this, because I do not propose, for a moment, any arrangement for transferring to the owner of the goods any liability other than that of the warehouse in which the goods have been placed. The goods are landed a day or two days, or it may be only a few hours before the time at which they would be landed in the ordinary course. At the expiration of that time the risk of the goods being in the warehouse ought, of course, to be on the owner. I may say that when I first framed the amendment I wrote in the words "two days, " and in order to prevent any contentious dispute I afterwards altered them to "seven days," thinking that far more than would meet the necessities of the case.

Senator EWING

- There are two portions of this clause, the first dealing with the question as to at whose expense goods shall lie at the warehouse, and the clause says it shall be at the expense of the master or owner of the ship. Is not that perfectly fair seeing that they are put there for the convenience of the master or owner of the ship 1 In the next place who, primarily, is to pay for the storage of the goods ; should it not be the person who puts them there - the master or owner of the ship 1 Then the latter portion of the clause says they shall be there at the risk of the master or owner of the ship as if they had not been unshipped. That simply means that the mere fact of unshipping shall not alter the relations of the parties. I can imagine nothing fairer, and to alter the legal relations of the parties after seven days appears to me to be manifestly unjust. The legal relations primarily mentioned here are the relations between the owner of the ship and the Customs, and then the clause goes on to say that the relations between the shipping company or carrier, shall not be affected by the mere transference of the goods from the ship into the warehouse. Senator Pulsford suggests that after seven days they shall be affected.

Senator Macfarlane

- The ship's voyage is over.

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Senator EWING

- The voyage is over, but I may suggest that where goods are sought to be landed under a collector's permit, where the owner of the goods has not taken delivery himself, the master has two alternatives, and may accept whichever suits him best. He may land the goods under the permit, and doing so will not alter his relations with the owner of the goods, or he may as an alternative carry them on further if he chooses. This clause merely means that the legal relations existing between him and the owners of the goods shall not be affected by the fact of his having decided to land the goods under the permit. If he puts them into the bonded warehouse he is the man who is responsible for them.

Senator PULSFORD(New South Wales). - I am afraid I cannot have explained the matter sufficiently, or honorable senators would not hesitate to accept this amendment. The liability upon the ship-owner due to putting such goods into the warehouse is fair so long as it is confined to the period which the bill of lading would cover, but? when we have arrived at a period beyond that covered by the bill of lading, then the liability of the owner of the goods should certainly be resumed. This clause would not be in the Bill at all if it were not necessary sometimes to give the master of the ship leave to expedite the discharge of the cargo, and when we give him that leave it becomes necessary to secure the rights of the owner of the goods during the period within which he would be compelled to take delivery under the bill of lading. Is anything more fair '( But surely it is not fair to extend the liability of the master or owner of the ship to a lengthened period beyond that provided in the bill of lading 1

Senator Ewing

- Suppose the owner of the goods never comes for them, who is to pay storage 1

Senator PULSFORD



-The goods will be saleable by the owner of the warehouse at the expiration of a fixed time.

Senator Ewing

- Supposing they are no good, and that is the reason the owners refused to take delivery ?

Senator O'CONNOR

- That is a common cause of dispute.

Senator PULSFORD

- The ship-owner would not take them on board under such circumstances. The collector's permit is given as a rule not to enable the discharge of a package or parcel of damaged goods, but generally to enable the whole cargo to be discharged. It may be the case of a mail steamer which may have to hurry on to complete her contract, and the collector may say - "Yes, you may land your cargo and proceed on with your mail business." The clause then says very properly that the goods having been landed for the convenience of the ship, shall not be at the risk of the owners ; but surely we do not want to create a liability that the bill of lading does not throw upon the owners of the goods, and say that he shall be liable for damages or risk by fire or any other risk that may accrue month after month. I am quite certain that if honorable senators grasped the point they would see the fairness of the amendment I propose to make.

Senator O'CONNOR

- The honorable senator has not quite seen what the object of the clause is, and I propose to make an explanation now, because I would not like him to suppose that really any injustice would be effected by the clause. The only object the Customs authorities have in interfering between the consignee of goods and the shipowner is to keep the Customs control. We have nothing whatever to do with their rights or liabilities inter se, but we want to be quite certain that there shall always be somebody responsible for goods which are on the wharf. The honorable senator will see that by clause 67 entries are to be made of the whole of any cargo landed or to be landed not later than seven days after the report of the ship, or within such further time as the collector may see fit to allow. Then it is provided that if default be made in the entry of any goods, the collector may cause the goods to be removed from the warehouse, and if the goods are not claimed and entries passed for them within a certain time, they may be sold. So that the operation of the Customs law is, that immediately goods come in, the owner has to make an entry for them, and if he delays making an entry within a certain time, the collector may remove them to a warehouse.

Senator Pulsford

- Before the time at which the owner of goods may have an opportunity of making entries, the collector may have given his permit and the goods may have been landed, and that may happen during the night, and by the time the owner arrives at the office in the morning, the ship may be far away.

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Senator O'CONNOR

- It may be; but an entry may still be made of the goods, and if an entry is not made, they may be removed to a warehouse. Then under clause 7 1 it is provided -

Goods unshipped and landed under the collector's permit shall be placed by and at the expense of the master or owner of the ship from which they were unshipped at a place of security.

That is not a store ; it may be any part of the wharf where they may be safe, or it may be a King's warehouse. If the goods are perishable goods, I suppose they would be put under cover, but if they happened to be machinery or iron, they might be left anywhere on the wharf where they would be safe. It is simply directed that they shall be put in a place of security if an entry is not made for them. Then the Custom-house officer acts under clause 67 and removes them to a warehouse, and within the meaning of this clause they are lawfully removed, and when once they are lawfully removed to a warehouse by direction of the Customs authorities there is no liability upon the ship-owners. If entries are not passed for goods that have been landed, and the owner of them does not turn up, if the goods are left lying on the wharf, and we say that after seven days the captain shall be no longer responsible, what will it matter to him whether the goods are taken or not, or whether they are smuggled or not. The object of the clause is to secure some kind of control over the goods and to have some one responsible for them, and the clause cannot affect the liability as between the master of the ship and the owner of the goods under the bill of lading in any way whatever. The Customs control is preserved and the rights of parties are not interfered with.

Senator PULSFORD(New South Wales). - Has the Minister any objection to put in words which will limit the liability to Customs duty ?

Senator O'Connor

- I cannot consent to that.

Senator PULSFORD

- Then the Minister desires to preserve a liability on goods for Customs duty and a liability on goods for warehouse charges ?

Senator O'Connor

- So long as they are at the risk of the master he is bound to keep his eye on them and see that the owner of the goods does his duty.

Senator PULSFORD

- Goods on which there is no liability to Customs duty are also covered by the clause. A ship gets a permit from the Customs to land goods on which there is no duty, and once free goods are landed they pass the Customs and there is no liability at all to the department. The liability is simply one to the warehouse. I hold that there ought to be no liability placed on the holders of goods by the Crown for any expenses in which it is not interested.

Amendment negatived.

Clause agreed to.

Clause 122 (Ships' stores).

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Senator O'CONNOR

- In looking through clauses 122, 123, and 124, dealing with ships' stores, it appeared to me that they might be amended verbally, so as to bring out unmistakably the intention of the committee. I have had some amendments drafted which will put the provisions in such absolute language that there can be no mistake as to what our meaning is, and what the rights of parties are. It is very desirable that this should be done, because my wish is to see the Bill leave the Senate in such a form that our amendments may be accepted exactly as they are. I propose to alter the order of the clauses. Clause 123, after it is amended, will become clause 122. The only difference, besides the position of the clause, is that it is made perfectly clear that the expression " ships' stores " refers not only to the stores shipped in any particular State, but also to stores which are brought out here in the ship. Clause 124, which will become clause 123, applies only to the unshipping of free stores, and I propose to make it apply to ships' stores generally. In the clause, which is now clause 122, I propose to deal with the allowance of free stores. It seems to me that logically it ought to come after the clause dealing with stores to be used on payment of duty. The clauses, as redrafted and transposed, do nothing more than carry out the intention of the committee.

Clauses 122, 123, and 124 amended, transposed, and agreed to as follow : - 122. Ships' stores whether shipped in parts beyond the seas or in the Commonwealth unless entered for home consumption or except as prescribed shall only be used by the passengers and crew and for the service of the ship and after the departure of such ship from her last port of departure in the Commonwealth. 123. No ships' stores shall be used contrary to the last preceding section or shall be unshipped except by permission of the collector.

Penalty : £50. 124. The prescribed allowance of ships' stores for the use of the passengers and crew and for the service of the ship may be shipped free of duty on board any ship of not less than 50 tons gross tonnage entered outwards for parts beyond the sea.

Clause 150 (Genuine invoice).

Senator Sir FREDERICKSARGOOD (Victoria). - I have to thank Senator O'Connor for his courtesy in agreeing to the recommittal of this clause. As it stands it is in a most unsatisfactory position. It will hamper legitimate trading, and play into the hands of those who choose to use false invoices, and practically legalize fraud on the Customs. The commercial public are up in arms about the provision. Special meetings have been held by the Chamber of Commerce, and also by the committees of several trades. A deputation had several interviews with the Minister for Trade and Customs, but failed to convince him of the gravity of the position and the necessity of an alteration. A request was then made for an interview with the Prime Minister and the Attorney-General, with, of course, the Minister for Trade and Customs, to discuss the matter, but unfortunately the appointment is made for to-morrow. Merchants, as a whole,

recognise that it is in their own interests to see that the Customs are protected. It does not matter one iota to them what duty they pay, so long as they all pay alike. The practice of the association has always been as far as possible to assist the Customs to secure that result. The request made is that paragraph (a) shall be altered to read as follows : -

The genuine invoice means the original invoice prepared and issued by the seller showing the true description of the goods and the actual money-price paid or to be paid for the goods by the purchaser to the seller without any deduction.

That is the amendment which the committee did not see its way to accept on a previous occasion. It would absolutely protect the Customs from fraud ; but the clause as it stands will absolutely encourage fraud to a very large extent. It is always dangerous to recognise two classes of individuals. It gives those who like to take advantage of the provision an opportunity to defraud the Customs, and also to defraud their fellow merchants to a very large extent. Under the clause as it stands these people will be able to do this with impunity to a very large extent, because it reads as follows : -

The genuine invoice means -

The original invoice prepared and issued by the seller in the country whence the goods were exported showing the true description of the goods and the actual money-price paid or to be paid for the goods by the purchaser in the country whence the same were exported without any deduction.

Year by year the sale of goods is being more largely centred in London. The goods never come near England, but are shipped from Marseilles, Antwerp, or Hamburg. Take, for instance, the shipment of a large quantity of goods from the south of France. These are shipped from Marseilles by the P. and O. boat, but the bills of lading are made out in London. You cannot get honestly that which is demanded by the clause - that the invoice shall be made out by the seller in the country whence the goods are exported. Those who like to take advantage of the clause can provide these invoices, but they will not be made out by the sellers. They will be made out by the importers, probably on invoices printed by themselves and filled out by their own clerks. This is a very cruel position in which to put a large body of commercial men who do endeavour to conduct their businesses honestly. All that can possibly be wanted in the interests of all concerned is the clause as I have already read it, namely, that the original invoice shall be prepared by the seller, showing the true description and the actual market price paid by the purchaser to the seller, without any deduction. I am perfectly certain that that meets the equities of the case. The clause as now proposed is a distinct invitation to fraud. Fraud will be committed to an extent that will astonish the Customs if they find it out. It is not wise for the committee not only to permit such a state of things, but to invite it. I do not know that I can say more than I have already said, except that I should like to refer to paragraph (b), where a totally different class of invoices are allowed. Paragraph (b) apparently must have been prepared in the interests of the consignors. There the original invoice prepared and issued by the consignor comes in. The consignor himself can make out the invoice as he likes, and the only check the Customs have upon him is under clause 149, that that invoice shall represent the saleable value of such goods in the principal market. That will apply in exactly the same way under my amendment. Let us by all means supply to the Customs an original invoice of the price paid by the buyer. Let that invoice be checked as much as the Customs like. But again I say, that to leave the clause as it stands will be a cruel wrong to the buyer and to the commercial public, not merely of Victoria but of the whole Commonwealth. I am now voicing the opinion of a large body of the commercial public throughout the Commonwealth. I regret that we have not been able to convince the Minister of Trade and Customs ; but this is one of those matters that experts can best understand. It may be just as difficult to explain these matters to a non-mercantile man, as probably it would be to explain some technical legal matter to myself as a layman. I can only hope that the committee will see their way to agree to the amendments which I shall propose. I move -

That paragraph (a) be omitted, with a view to insert in lieu thereof the following: - "The original invoice prepared and issued by the seller showing the true description of the goods, and the actual money-price paid, or to be paid for the goods by the purchaser to the seller without any deduction ; or " -

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Senator O'CONNOR

- I am sure that Senator Sargood will acquit me of any personal discourtesy to him if I say that, this being the third occasion on which the matter has been brought forward, I do not propose to discuss it at any

length. It has been thoroughly thrashed out previously, and in the meantime an influential deputation, representing men who, I suppose, are intimately acquainted with trade, has waited upon my colleague the Minister of Customs. He has fully considered their representations, and he and I have discussed them together. As a result we proposed the new clauses which were carried on the last occasion, and which seem to me to afford relief as far as we can afford it in the direction Senator Sargood asks. We cannot do anything more. Senator Sargood, with those he represents, and the Customs authorities, not only here but in all the States, are evidently absolutely divergent in their views, which cannot be reconciled. We do not think it is consistent with our duty to the revenue to consent to the honorable senator's wish.

Senator DOBSON

- We all know that Senator Sargood has given the committee a great deal of useful information about this matter, and none of us disputes the enormous experience he has had in passing goods through the Customs. Knowing his absolute integrity and honesty, and that his sole desire is to make this Bill watertight to make it operate in favour of the honest trader - I do not think that, because a number of merchants have not persuaded the Minister of Customs to agree to a certain amendment, that is any reason why we should not consider the matter again. The clause now under consideration is the most important clause in the Bill, under which we are going to collect eight and a half millions of money. It is a clause which will be brought into effect every hour the office is open, and no time spent upon it will be wasted if we try to reconcile the differences of opinion which exist in the minds of experts. As far as my own view is concerned, I think that a man should pay duty upon the invoice which shows the exact price paid by the purchaser to the seller ; but that price should not be less than the market value of the goods in the country from which they were exported. If words are inserted to carry out that idea I cannot conceive that loss of revenue can take place, or that any door for fraud can be opened. On the contrary the door for fraud is open under the clause as it stands, since it allows invoices to be concocted, and sent out as bogus invoices ; whereas if the Government adopt Senator Sargood 's amendment a person must perpetrate an absolute fraud, and put forth a forged invoice in order to evade the Customs. Of the two courses proposed, that recommended by Senator Sargood is by far the better. In connexion with this matter I have already called attention to clause 150a, in which, under certain circumstances, substituted invoices are allowed. If I were Minister for Customs I would allow no clause to go into the Bill to enable the collector to accept a substituted invoice. If an invoice was lost, or was not forthcoming, the best thing possible under the circumstances should be done. I would have a declaration of the value of the goods made, and have that checked by experts. To permit substituted invoices is a most dangerous provision. The matter is so important that if Senator Sargood chooses to go to a division I shall cordially support him.

Senator GLASSEY

- I have all along thought that Senator Sargood's contention was right, but I cannot disguise from myself the fact that the Minister for Customs is equally desirous of checking fraud. Nor can I forget that the Minister must have availed himself of the best and most reliable information obtainable in regard to this clause. That being so, I think it would be unwise for Senator Sargood to push his amendment to a division.

Senator MACFARLANE (Tasmania). I trust that Senator Sargood will press his amendment to a division, because in practice the clause as it stands in the Bill will be found to be impossible to carry out. The Bill asks importers to do what is impracticable. The seller of the goods is not the one who exports them from the country in which they are manufactured.

Senator O'Connor

- We do not care about that a bit. We want the invoice of the seller in the place of export.

Senator MACFARLANE

- The Government are asking traders to provide an invoice which cannot be got.

Senator O'Connor

- That is the condition on which goods are to be introduced into the Commonwealth.

Senator MACFARLANE

- The genuine invoice is the invoice of the seller.

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Senator PLAYFORD

- I do not know that fraud can absolutely be checked, either under Senator Sargood's proposal or under the Bill as it stands ; but I think Senator Sargood is wrong if he anticipates that under the Bill we shall open the door for fraud more than under his own proposal. The Customs I know always desire to obtain from the country from which goods are exported the price paid for them in that country. Agents who send goods on account of continental firms are just as much likely to give a salted invoice as the man who manufactures the goods. They are simply agents for the manufacturer in Germany, Italy, or France, as the case may be. As agents they sell to somebody in London. The goods are shipped at Marseilles, Hamburg, or elsewhere direct from the manufacturer. What the Customs always desire to learn is - first, where the goods come from, and secondly, the price paid for the goods in the country from which they were obtained, in order that ad valorem duties may be paid accordingly. Is it not better to obtain the invoice from the manufacturer than from an agent in London, who can salt the invoice to any extent? As a matter of fact the Customs have to depend more on expert officers who understand the value of goods than upon invoices. The Customs have experts who know practically the value of goods in the places where they are manufactured.

Senator Sargood

- Utterly impossible.

Senator PLAYFORD

- It is not impossible, so far as my experience of the Customs goes in South Australia. I have had cases where, when there were disputes, I have had the importer and the Customs officer before me and cross-examined them ; and I found that my own officers thoroughly understood the value of the goods, and that their estimates accorded with the value placed upon the goods by experts whom I called in. I see just as much danger of fraud from taking an invoice supplied by an agent in London as from taking an invoice issued by a manufacturer on the Continent.

Senator PULSFORD(New South Wales). - I am sorry I cannot indorse Senator Playford's belief in the omniscience of Customs officers. I have had experience of those officers being "had" to a very serious extent. I remember some years ago that, to the satisfaction of Mr. F. W. Walker, who was then Commissioner for Trade and Customs in Victoria, I proved cases of fraud in quite a number of instances. I can tell the committee of one. A quantity of goods had been passed out for drawback. They were suits of clothes worth about 34s. each, but they had been passed out as being worth 60s., and drawback had been paid upon them at that value. I will undertake to say that if an order were sent to Paris to a fashionable milliner for £100 worth of goods, and if equal portions of these were landed in the five capital cities of Australia, different values would be placed upon them at each place by the Customs officers. It is of no use depending upon the invoice of the manufacturer on the Continent.

Senator McGregor

- Will the London agent be more honest ?

Senator PULSFORD

- All mankind are cut from the same piece of cloth. It is of no use imagining that any of us are very much better than any others. We all need to be treated with the same care and caution. What is the true position with regard to this? I would ask honorable senators to try and find out the lines upon which trade is done, and if they will follow those lines they will be most likely to arrive at what they want - that is, the truth. There are men in London who will buy the whole of the output in a given line of some continental manufacturer, and send their orders for shipment to various parts of the world. They may not send invoices with them ; they may send only memoranda. There may be £10,000 worth of goods manufactured in one month, and so much may be sent to one place and so much to another, and no invoice may pass from the manufacturer on the continent to his representative in London for different ports; therefore, it is not possible to obtain this original invoice, as it is called. What surprises me most is that the Customs authorities are willing to ask for an invoice which, if correct, must naturally be at a lower price than the invoice which Senator Sargood is willing the merchant shall have to pay on. The nearer we get to the buyer from whom we ourselves obtain the goods the higher will be the price, and if these goods are subject to ad valorem duties, the more the duty that will be obtained. It is, therefore, clearly Senator Sargood, and not Senator O'Connor, who is proposing now to do most to protect the revenue.

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General, Queensland

Senator DRAKE

. - The object of the Government and the Customs authorities is not, I take it, to get the highest amount possible, but to get the true amount of duty. The honorable senator's argument, therefore, entirely falls to the ground, that is, that we should be glad to accept the invoice from the firm in London, which I would call the invoice of the last seller, simply because as a rule the value of the goods given in that invoice would be higher. What we want to get at is the true value of the goods, and the Bill lays down a certain basis for ascertaining it.

Senator Clemons

- The true value where?

Senator DRAKE

- At the port where the duty is paid, and to get that we go back to what, I think, should have been called for clearness, " the country of origin." Then we find out what was the fair market value of the goods in the country whence they were exported.

Senator Sir Frederick Sargood

- Goods from Japan are sold in London at an advance of 50 per cent., and we are to go to Japan to find the true value of them 1

Senator DRAKE

- Very well; that is the basis provided, and then there is 10 per cent, to be added.

Senator Clemons

- Why not make it payable on the local value at once 1

Senator DRAKE

- How would we ascertain that ?

Senator Playford

- What would be the value of goods in a glutted market 1

Senator Clemons

- Surely we could devise some means of ascertaining it, and we would avoid all chance of swindling ?

Senator DRAKE

- It is all very well to say in that light and airy manner that we could easily find out the value here, but in practice I believe we would find great difficulty in ascertaining it. The basis of valuation laid down in the Bill is, I believe the basis of valuation accepted in nearly every country - the fair value of the article in the markets of the country from which it was exported. That is to say, the country of origin. I think there would not have been nearly so much confusion introduced into the discussion of this subject if that term had been used in the first place. The difficulty in using the term " whence the goods are exported " is that they may be exported from a number of countries in succession. In the same way there may be a number of successive sellers of those goods. They may be sold from one country and shipped to another, then sold by a merchant in that country, and then shipped to some other country. What is clearly intended by the Bill, is that in order to ascertain the true value of the goods we go first of all to the country from which they have been exported, and ascertain their fair market value in that country, and there is an addition made afterwards of 10 percent.

Senator Playford

- If the goods were shipped to London, they would be re-shipped from London with a British invoice.

Senator DRAKE

- They might be reshipped from London with a British invoice, but what we desire to obtain is the invoice from the seller in the country whence they were exported in the first place.

Senator Sir Frederick Sargood

- We cannot do it.

Senator DRAKE

- In that case provision is made for accepting another invoice as a substitute. I think it is generally agreed that the best way of ascertaining the real value of goods is to get their fair market value in the country whence they were first exported, and use that as the basis of valuation.

Senator CHARLESTON

- We have discussed this matter frequently, but there is still great confusion as to the effect of this clause on the revenue and trade of the county. It has been shown very clearly that it would be impossible in

many instances to get the invoice from the manufacturer himself. That has been admitted by the Government, because they have provided that a substituted invoice may be received. It has also clearly been shown that the moment we make it legal to substitute one invoice for another, we open the door to any number of frauds. The whole thing practically hinges upon that. The Customs officers should deal with one invoice only, and let that be from the last seller of the goods to the merchant within the Commonwealth. We will then know clearly what we are dealing with; otherwise I am afraid that instead of protecting the revenue we shall be opening the door to fraud of a very extensive character. Senator Playford stated just now that practically it would be the expert who would do the work, but the honorable senator destroyed his own argument by saying in an interjection that goods might be purchased in a glutted market.

Senator Playford

- I never said anything of the sort. I asked what would be the value of goods in a glutted market.

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Senator CHARLESTON

- If goods were purchased in a glutted market in London or in Hamburg, and the invoice was sent out stating the price of the goods in that glutted market, the expert would say - "Nonsense, that is not the value of the goods, the value of the goods is so-and-so" - quite ignoring the fact that they were purchased in a glutted market. After listening attentively to all the arguments of honorable senators, I shall, in the interests of the Commonwealth, support Senator Sargood.

Question - That the words proposed to be omitted stand part of the clause - put. The committee divided -

Ayes ... .. 13

Noes..... 12

Majority ... .. 1

Question so resolved in the affirmative.

Amendment negatived.

Clause agreed to.

Clause 219 verbally amended and agreed to.

Bill reported with further amendments.

BEER EXCISE BILL

In Committee.- (Consideration resumed from September 6, vide page 4624).

Clause 42 verbally amended and agreed to.

Clause 48 (Power under writ of assistance).

Senator O'CONNOR

- . - I propose to give the officer power not only to open but also to search any house, premises, or place.

Senator Sir Frederick Sargood

- Will the clause cover the case of cupboards ?

Senator O'CONNOR

- I propose to cover the case of cupboards or locked places by inserting the word "enclosures" before the word "chests."

Senator McGREGOR

- Many cunning devices are resorted to for the purpose of evading the Customs and Excise, and I think "repositories" is a better term than "enclosures." An enclosure might mean a stockyard or a sheepyard or anything. Repositories, which are often used for this purpose, are in the wall or under the ground.

Senator O'Connor

- I think "depositories" will be a better word to use than either "repositories" or "enclosures."

Clause amended and agreed to as follows : -

Any officer having with him a writ of assistance or a Customs warrant under the Customs Act 1901 may at any time in the day or night enter into any house, premises, or place, and may break open and search the same and any depositories, chests, trunks, or packages in which beer not having paid duty is or is supposed to be.

Clause 52 (Cart notes to be produced).

Senator O'CONNOR

- Attention was called to the rather wide terms of this clause. It certainly is too wide as it stands, and I

propose to move some amendments so that it shall apply to every person and not merely to a person selling beer.

Clause amended and agreed to as follows : -

Every person who sells beer shall, on demand by the officer, produce to him all cart notes relating to all beer received by him from a brewery in loose bottles or bottles in baskets. Penalty: £10.

Clause 54 verbally amended and agreed to.

Clause 57 (Bottler's label).

Senator Sir FREDERICK SARGOOD

- Is not an amendment wanted in this clause, consequent upon Senator Dobson's amendment, with regard to the delivery store ? It will be remembered that we have provided for places other than breweries.

Senator O'CONNOR

- That is really provided for in clause 27, as follows : -

And every delivery store shall be deemed part of the brewery in connexion with which it is used.

Clause agreed to.

Third Schedule.

Senator O'CONNOR

- An amendment in this schedule is necessary in consequence of Senator Dobson's amendment. I move - That the third schedule be amended by the insertion after regulation 0 of the following regulation : - " The delivery store-book. "6a. Every brewer who has a delivery store shall keep therein a book in which he shall enter daily particulars of all beer transferred into the delivery store, and of all beer removed therefrom."

Amendment agreed to.

Schedule, as amended, agreed to.

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Senator O'CONNOR

- The clauses which were inserted at the instance of Senator Dobson I have had redrafted and put in a shape more consonant with the general provisions of the Bill. The general purport of the new clauses is that if a person has in connexion with a brewery another brewery or a delivery store, there shall be a transfer under proper permits from the brewery to the delivery store, and the Customs authorities shall have a control of all the transfers which go on from one place of business to the other. I ask the committee to omit clauses 27a to 27c inclusive with a view to insert in their place the clauses which have been printed and circulated.

Clauses 27a, 27b, and 27c negatived.

New clauses 27a, 27b, and 27c agreed to.

Senator STANFORTH SMITH

- I circulated a clause to put in after clause 51, but it has occurred to me that it might infringe on State rights. Before the Federation the State Parliaments had power to legislate on practically all subjects. Now, however, those powers are divided up between the Federal and State Legislatures, and we must be careful to see that we do not infringe on State rights. The Victorian Excise Act includes certain stipulations and precludes certain drugs from being used in the manufacture of beer, and there will certainly be a difficulty if such a provision is not inserted in this Bill, because, under such circumstances, in Victoria there will be no exclusion whatever. However, it is perhaps not a matter that can be dealt with in a Federal Beer Excise Bill, and, therefore, if Senator O'Connor thinks that such a clause would bring the measure into conflict with a State as trenching upon State rights, I will not proceed with it.

Senator O'CONNOR

- I think that the honorable senator is taking a wise course. Without saying that the clause he has suggested would necessarily bring the Commonwealth into conflict with a State, it would certainly be embarking upon a kind of legislation which had better be left to the States.

Bill reported with further amendments.

PUBLIC SERVICE BILL

Bill read the second time.

In Committee :



Clause 5 (Appointment of Public Service Commissioner and Inspectors).

Senator PULSFORD

- It is a fair thing to ask, in view of the rather singular circumstances in which the discussion of this Bill has been entered upon, that the representatives of the Government should undertake to recommit any clause which may be passed. The second reading debate has terminated in an abrupt manner, and we have, therefore, a right to ask them to meet us in this respect.

Senator MCGREGOR

- I agree with Senator Pulsford, but I do not know that it is necessary to ask Senator O'Connor to consent to recommit any clause. The matter will be in the hands of the Senate, which can recommit any clause it thinks proper. But now that we have reached clause 5, which deals with a very debatable subject, providing for the payment of a Public Service Commissioner and a number of inspectors at high salaries, I should like to point out that there are several honorable senators who would like to express an opinion after some little thought on the question. The Bill has come on somewhat unexpectedly. I would, therefore, ask that progress be reported now.

Postmaster-General

Senator DRAKE

. - There is no desire whatever to hurry the passage of the clause. In reply to Senator Pulsford, I wish to say that I do not think the Government will be justified beforehand in committing itself, by a promise, to recommit or even postpone a clause. As there is a general desire to report progress, and as the Vice-President of the Executive Council is ready to go on with the Property for Public Purposes Acquisition Bill, I will consent to progress being reported at this stage.

Progress reported.

PROPERTY FOR PUBLIC PURPOSES ACQUISITION BILL

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Vice-President of the Executive Council

Senator O'CONNOR

. - I move -

That the Bill be recommitted for the reconsideration of clauses 7, 10, 12, 16, 44, and 59.

In moving this motion it is right to state the reason why I am going on with this Bill now, and why I did not proceed with it after the report of the committee upon the Beer Excise Bill. There are some amendments upon clause 44 which have already been circulated, and there is another very important amendment which I have had prepared, and which I had expected to receive from the Printing-office this afternoon. It has not, however, arrived yet. I had intended to go on with the consideration of the Public Service Bill, hoping that, later on, the amendments to which I refer would arrive from the printer. However, as there is a general desire not to go on with the Public Service Bill, I am willing now to proceed with the recommitment of the Property for Public Purposes Acquisition Bill.

Question resolved in the affirmative.

In Committee :

Clause 7 -

Upon the publication of such notification in the Gazette, the land described in such notification shall by force of this Act be vested in the Commonwealth for the purposes of this Act for an estate in fee simple in possession, freed and discharged from all trusts, obligations, estates, interests, contracts, charges, rates, rights-of-way, or other easements whatsoever, and to the intent that the legal estate therein, together with all powers incident thereto, or conferred by this Act, shall be vested in the Commonwealth.

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Senator PULSFORD

- The amendment which I propose to make in this clause is of considerable importance. The Bill, as drawn, gives power to compulsorily acquire property - not only against an individual, but against a State. While it is quite right either for a State or for the Commonwealth to have power to acquire property compulsorily against a private individual, it is altogether a different thing for the Commonwealth to have power under all circumstances to compulsorily acquire property against any State. I would ask honorable senators to bear in mind that in Australia - more perhaps than in any country of the world - there is a tendency for the State to take hold of business matters. Therefore the question of the acquisition of

property in Australia is a more serious matter than it would be in a country like the United States. I direct the attention of the committee, first of all, to the Constitution Act, which, in section 51, sub-section xxxiii., gives power for -

The acquisition, with the consent of a State, of any railways of the State, on terms arranged between the Commonwealth and the State.

It is clear from this provision that the Commonwealth cannot take over the railway property of any State without the consent of the State. Not only so, but sub-section xxxv. reads -

Railway construction and extension in any State, with the consent of that State.

It therefore follows that not only is the Commonwealth unable to take over the railways of a State without the consent of the State concerned, but that, having taken over the railways, it would be unable without the consent of the State to construct a further additional mile of railway. This condition of the consent of the State seems to have been generally accepted at the earlier meetings of the Convention. I should like now to direct the attention of the committee to the state of the Constitution when it left the Convention which sat at Adelaide. In section 53 there was the following provision -

The Parliament shall, subject to the provisions of this Constitution, have exclusive powers ..... with respect to : -..... The government of any territory, which, by the surrender of any State or States and the acceptance of the Commonwealth, becomes the seat of government of the Commonwealth, and the exercise of like authority over all places acquired by the Commonwealth, with the consent of the State in which such places are situate, for the construction of forts, magazines, arsenals, dockyards, quarantine stations, or for any other purposes of general concern.

It is clear that when the Commonwealth Bill was before the first meeting of the Convention, a very limited power was intended to be given to the Commonwealth in respect of the acquisition of property. Property was always to be acquired with the consent of the States. The Bill remained the same when the convention met in Sydney. No change was made until the Bill was before the Convention in Melbourne, when Mr. Barton proposed a provision which was not quite the section we have at present, but was as follows -

The acquisition of property on just terms from any State or person for the purposes of the Commonwealth.

In the debate which took place, Sir John, then Dr., Quick spoke as follows -

Under the Constitution of Switzerland, on payment of a reasonable indemnity, the confederation has the right to use or acquire drill grounds and buildings intended for military purposes within the Cantons, together with the appurtenances thereof. It is so also in Germany, where the Constitution says that the right to Construct fortresses within the territory of the Empire shall belong to the Emperor, who shall ask for the appropriation of the means required for that purpose, if not already included in the regular appropriation..

In Canada the Constitution provides : -

The several provinces shall retain all their respective public property not otherwise disposed, of in this Act, subject to the right of Canada to resume any lands or public property required for fortifications, or for the defence of the country.

So that in Canada, and in other countries under Federal Government, there is only this. modified power of acquisition by the Federal Government of property belonging to a State. Now, Sir George Turner, following in the debate, spoke as follows : -

I am not at all satisfied that it would be advisable to insert this new sub-section. It comes on us somewhat as a surprise, and I would like to have further time to consider the effect of it. It might enable the Commonwealth to run the States into enormous expenditure. The leader of the Convention will see that whatever property has to be acquired will probably be acquired out of State's money. If we increase these powers of purchasing property, we may enable the Commonwealth to incur enormous expenditure. I think it is shown by some notes I have with regard to Canada and other places, that that has really been the result of a power of this kind. If it were so here the States' Treasuries would be the sufferers.

The Hon. R. E. O'Connor - Their functions are much more extended.

Sir George Turner. I know that, but Still the honorable member will recognise that where there is a power, the body having that power would probably extend it to its utmost limit.

That is a point I wish honorable senators to think of, because we may be quite sure that there will be an

exercise of power which will tend frequently, if not always to the excess of that power. Sir George Turner continued -

If they go a little further than we intended or a little beyond the strict reading of the Act, how are we to stop them ?

Then, afterwards Mr. Isaacs, referring to the matter, said -

I would draw Mr. Barton's attention to the fact that acquisition would mean compulsory acquisition - that is acquisition by the Commonwealth against the will of the State, which would reverse the principle which has been adopted in the Bill, that a State should not be compelled to give up any portion of its territory.

Then Mr. Isaacs further pointed out that the Constitution of the United States contains this clause - and I presume it was from the United States Constitution that the clause which I have read and which appeared in the Constitution framed in Adelaide was taken - which refers to -

The exercise of like authority over all places acquired by the Commonwealth with the consent of the State in which such places are situated for the construction of forts, magazines, arsenals, dockyards, quarantine stations, or for any other purposes of general concern.

Then on the next page it will be found that Mr. Barton, in reply, withdrew the subsection for the time being at any rate. This was in the early days of the meeting in Melbourne in 1898. When the Bill had been fully gone through and was recommitted, and the convention was within thirteen days of its closing, Mr.

O'Connor, who is now leader of this Senate, said -

I beg to move the insertion of the following new sub-section: - "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."

Some question has been raised as to whether the Commonwealth has the power inherently of acquiring property under just terms of compensation ; that is to say, whether it is not driven to bargain and sale only. It is quite clear that there must be a power of compulsorily taking property for the purposes of the Commonwealth..... Of course an

Act will have to be passed by the Commonwealth Parliament elaborating this enactment, and no doubt proper provision will be made in that Act for the method of acquiring land, and the mode in which land shall be obtained for the purposes of the Commonwealth.

The new sub-section was agreed to, and without any debate at all. I cannot quite understand how it was that, while a similar subsection in the earlier days of the meeting of the convention had been withdrawn after a good deal of very keen criticism, it was passed without debate on one of the closing days of its session. I presume members of the convention had talked it over and understood one another, and I have no doubt they did what they considered, to be fair, right, and true in the interests of the Commonwealth and the States concerned. I suppose also that the Bill we have now before us is the Bill which Senator O'Connor then stated would be necessary to elaborate this enactment. I would ask the committee to bear in mind the circumstances under which this section. 31 appears to have been inserted in the Constitution ; how largely it is at variance in its spirit and in its inherent tendencies with the section in regard to the railways, and how largely it is antagonistic to the powers under which properties are acquired in other States. I would also ask them to consider what is expected by the six different States of Australia.

Speaking for myself, I say at once I am absolutely certain that there is not one State of Australia which, if we pass this Bill as it now stands, will not be simply staggered to find that the Commonwealth Parliament is taking to itself the actual power of compulsory acquisition against any State whether it wills it or not. Let us consider what might happen. We have heard to-day notice of a question for to-morrow as to some dispute with regard to the terms on which we occupy this building; but under this Bill the Commonwealth Parliament are taking powers to themselves under which they could say to the authorities of the State of Victoria - " We are not going to continue this dispute with you ; we intend to compulsorily acquire Parliament House, Melbourne, and to use it for as long as necessary. When we no longer require the use of it we shall dispose of it on the best terms we can." They might say to the Parliament of New South Wales - "We think your official buildings will suit admirably for the conduct in. New South Wales of the Federal departments. There are your offices known as the Treasury and as the Colonial-offices, and we require both those buildings. We will acquire them on what we consider to be just terms." Then the Commonwealth might consider that it would be desirable to have an Agricultural department. Already there has been a discussion in the other House, extending over two or three days, as to the desirability of the Commonwealth taking in hand the subject of agriculture, and the Commonwealth might say to Victoria

- "You have the Dookie college," and to New South Wales - " You have the Hawkesbury college and various model farms "--

Senator O'Connor

- Why not come to the point ? What is all this about?

Senator PULSFORD

- The point is that this Bill takes the power of compulsory acquisition against any State. By the amendment which I have drawn, I require that this power of compulsory acquisition shall be subject to a right of appeal by the State concerned to the High Court in case it should be dissatisfied with any intended acquisition. I move -

That, after the word "shall," line 3, there shall be inserted the words "subject to the proviso hereunder."

I shall afterwards propose to add this proviso to the clause -

Provided, however, that if the land referred to in such notification be Crown land, and the State shall be dissatisfied with the notified acquisition of the same, it shall be lawful for such State at any time within 39 days thereafter, to institute proceedings in the High Court by way of appeal against such intended acquisition, and the court shall cause full inquiry to be made into the circumstances of such intended acquisition and have power if it does not appear to such court that the circumstances warrant the acquisition of such land by the Commonwealth, notwithstanding the dissatisfaction of such State, to direct the cancellation of such notification.

Senator Playford

- The honorable senator is placing the High Court above Parliament. We should have to play second fiddle under that.

Senator PULSFORD

- Well, I believe it is necessary. Under this very Bill there are certain matters referred to the High Court, and I am therefore following a very good and, I believe, a very necessary example. I am quite confident that the majority of the people of the States will not be satisfied to have this power of compulsory acquisition without some restriction. I have mentioned various matters in connexion with which land or property may be compulsorily acquired, but there are various others. There is the High Court of Judicature itself. There is the power taken also in connexion with statistics, with bankruptcy, patents, copyrights, immigration, conciliation and arbitration, the whole of which throughout the Commonwealth will require very considerable office accommodation, and when we further take into consideration the accommodation required in connexion with the Customs, the Post-office department, light-houses and defence, we find that the power of acquisition on the part of the Commonwealth is a very wide one, and may become very serious indeed. I therefore ask the committee to very seriously consider the matter which I now respectfully and earnestly put before them.

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Senator O'CONNOR

- The proposition of the honorable senator seems to me a most extraordinary one to submit to the Parliament of the Commonwealth. The honorable senator seems to be struggling against the power which the Constitution has given to us to make laws for the acquisition of property. In the first place, I think that every one must admit that it is impossible to Conceive the possibility of any Commonwealth constituted as ours is, being able to carry on its business, unless it has some power to compulsorily acquire the land upon which it is to carry out its administration. Otherwise, inasmuch as its operations have to be carried on upon some property, and that property is the property of the States in which each of the places where the operations are carried on are situated ; if there was not this power of compulsory acquisition, the Commonwealth Government would be handed over to any speculator, or any person who wished to squeeze out an enormous sum of money for his land.

Without this power, some State, which might be disaffected for some reason or another, might say to the authorities of the Commonwealth, " We do not wish to have you coming in here at all ; we will have none of you." The honorable senator will see at once that that would reduce the Commonwealth to a state of impotency. With all the powers which we have created, it must be clear that we must have the power to say, " We shall settle down upon a particular part of Australia to do our business, and we will take it upon reasonable terms." Such a power is necessary for the existence of the Commonwealth. The only section of the Constitution which enables us to legislate for the giving of this power provides expressly that the

acquisition of the property shall be "on just terms " from any State or any person. The acquisition on just terms means on the payment of its value for it, and I cannot understand why we should not carry out the fulfilment of the power in every respect, by providing, as we have done, that whenever property is taken it shall vest in the Commonwealth, and the person or State whose property is taken shall have a claim against the Commonwealth, to be settled as provided in the Bill, by being paid the just value of the property taken. The honorable senator is not satisfied with that. He says, " I object not only to the way in which you provide for the settlement of compensation, but also to your giving power to take this land at all" - unless what? - "unless you consult the High Court of the Commonwealth and they say you may take the land." What does the amendment mean? The circumstances attending the acquisition of the land, the reason why it is acquired, and the expenditure of the money are all matters -of policy. Is it to be left to the High Court to inquire into all these circumstances of policy and to override the Government of the Commonwealth, which holds office by the will of Parliament? A majority in Parliament might approve of a policy, and the High Court might say - " We have considered this matter and we think your policy is altogether wrong. We do not think the circumstances justify you in taking this land at all." The matter has only to be stated for it to be seen that it would be perfectly absurd to put the Parliament and the Government as to these questions of policy under the High Court and subject to its control. I think my honorable friend is following a wrong principle. Neither the Parliament nor the Government should be put in that position, and above all things we should be careful to keep the High Court outside and above all political discussions and inquiries. For all these reasons I hope the committee will reject the amendment.

Senator PULSFORD(New South Wales). - Senator O'Connor did not quite fairly represent my argument. He spoke as though I wish to interfere and to prevent the Commonwealth from having any offices or any representation in a State, which, to use his own words, was obstinate. My intention is nothing of the sort. My intention is that if a State be dissatisfied with any acquisition it shall have the power of appeal. Let me instance another matter in which trouble might occur. The Postmaster-General is head of a department which controls a great deal of electric power. The States own railway and tramway systems in which electric power is used, and already we are threatened with certain conflicts with regard to the use of this power between the Commonwealth and the States. I can see that a State might have a very just cause of complaint against the Commonwealth if it proposed to take over certain property and to construct larger electric apparatus in a neighbourhood where they were likely to injure the electric apparatus run by the State. I hope that honorable senators will remember the limits of my amendment. I do not propose to stop the rightful action of the Commonwealth in carrying on its affairs. I only insist that a State shall have some power of staying the hand of the Commonwealth if it has reason to believe that it is acting in a way prejudicial to its interests.

Senator Dobson

- But it asks Parliament to cut down its rights under the Constitution. We cannot do that.

Senator PULSFORD

- I shall ask the Parliament to do anything which I think right in the interests of the Commonwealth and of the States as a whole. The amendment I propose to-day will be warmly indorsed from one end of Australia to the other.

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Senator EWING

- I do not agree with the last remark of Senator Pulsford. Those who really ' are federalists will see that if we passed an amendment of this kind we should be undermining one of the foundation stones on which the Constitution rests. All that Senator Pulsford read from the debates on the clause in the Convention are no doubt interesting to those who framed the Constitution. But here is a Constitution which contains certain specific clauses and conditions. The States in adopting the Constitution gave to the Commonwealth the power of acquiring property not generally, but for forwarding any of its objects or purposes. If we passed this amendment, we should hand over to the High Court powers which the Constitution placed in Parliament.

Senator Sir Frederick Sargood

- We could not do it.

Senator EWING

- I think we could do it under the power which says that we may make such terms as to the acquisition- of property as we see fit. But I do not think we would be justified in undermining a main principle of the Constitution, and that is that the Commonwealth is not to be hampered by the States in the performance of its duties. One of the most important things is that it shall have power to acquire property, which is' necessary for the execution of its constitutional powers. We are not elected for the purpose of keeping to the States that which the Constitution did not intend they should keep. It is no part of our duty, as protectors of the interests of the States, to undermine the Constitution. If, however, we passed this amendment, it would place the High Court in a position to say to the Commonwealth - " The circumstances do not warrant your acquiring this property. The policy you are pursuing is not the best for Australia." It would place the High Court in the position of a judge as to whether the Commonwealth policy, which necessitated the acquisition, was really the best in the interests of Australia. I think Senator Pulsford will see on reflection that that is no part of the duty of the High Court, or of any other court. The Parliament is sole judge of what is right and what is wrong, and no court should be placed in a matter of this kind over the heads of the representatives of the people.

Senator Sir FREDERICK SARGOOD

- I certainly was under the impression that the function of the High Court was to interpret the law, and not to dictate directly or indirectly to Parliament as to what it should do. If I read this amendment aright, it would certainly have the effect which Senator O'Connor deprecates. I very much doubt, too, whether we could legally do this thing, because section. 51 of the Constitution gives Parliament: power to legislate for the acquisition of property on just terms. The word " terms," from a commercial point of view, means the amount to be paid, or the conditions of payment - as to whether it is to be cash or on. terms. The proviso would come rather under one of the conditions of sale - not the terms of sale. From a commercial point of view there is much difference between the meaning of terms and the meaning of conditions. We should not carry out our trust if we were parties to any action which, would tend to lessen the powers of this Parliament. I do not anticipate\* that all the dangers will occur towich Senator Pulsford referred. On the other hand, I think that the action towich Senator O'Connor referred is within, the range of possibilities. We know that the Railway department in one State has. already made some outrageous demands on the Post-office, and that we may take as not an unfair example of what the States might do if they had the option of saying, "We will not allow you to have this property except at some exorbitant price."

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Senator DOBSON

- I am sure that Senator Pulsford, on reconsideration, will withdraw his amendment. A little reflection should show him that we would be almost traitors to the Constitution if we passed it. We are practically trustees of the Constitution, and to set to work to give away what it gives to us would be very suicidal. Supposing .that we did pass the amendment, and that a State, dissatisfied with the power we desired to exercise in acquiring certain State lands, did appeal, and that the High Court were unwisely to go into the question of policy and tell us that we could not acquire the land. The Parliament in that or the next session might repeal the provision of the Act. We cannot possibly consider a request to give away the rights which the Constitution gives .to the Parliament. I can see from Senator Pulsford's remarks what was in his mind. If the Commonwealth ever desired to acquire properties in a State, by which it would do the State a very great injury, all that would be taken into consideration in fixing the compensation, or if another site could be chosen probably it would be selected. But one thing Commonwealth citizens ought to understand, as this question of State rights is always being exaggerated, and that is that in all matters where it has power to legislate the Commonwealth Parliament is absolutely supreme. The man in the street will take a layman's view of this amendment. He will imagine that it is very much in order and very desirable, and that it would be an infringement of State rights to take any State property against its will; but that contention has no foundation in law or common sense. The authority of this Parliament must be absolutely paramount, and it can take any part of the Commonwealth it pleases even against the will of a State. I hope that Senator Pulsford will withdraw the amendment.

Senator PULSFORD(New South Wales). - When we were considering the Customs Bill, Senator O'Connor used to tell us that it was desirable to pass a certain clause as a reserve power to hold interrorem over evil doers. I presume he thinks it is necessary that the Parliament shall have this reserve power - a power which he indicates is not to be often used, but which Parliament wants to hold in

terrorem over the evil doers, the States. He indicated that some State may be obstinate, and, therefore, the great parent of all, the Commonwealth, needs power to bring the obstinate State to reason with or without its approval. I cannot follow him in this line of argument, and I cannot respond to the appeal to withdraw the amendment. I am quite certain that it is not out of accord with the spirit of the Constitution. In my opening remarks I indicated the way in which this sub-section was introduced into section 51, and expressed my belief that it went further than the Convention generally intended it should go, and that it would be wise and proper for the Senate, on behalf of the States, in carrying out the real spirit of the provision requiring the consent of the State even to build a single mile of railway, to give to the States the power of appeal if they so desire. As a rule, private individuals are only too glad to have their property resumed, because they know it means a profitable bargain. In the majority of cases the States will be only too happy to have their property resumed. But there may be reasons when it may be undesirable for a State to part with certain property, and therefore I think it should have the power of appeal in a case of that kind.

Amendment negatived.

Clause agreed to.

Clause 10 -

For the purpose of constructing any underground work, land under the surface may be acquired under this Act without acquiring the surface.

In such case no compensation shall be allowed or awarded unless -  
any mines or underground workings in or adjacent to such land are thereby rendered unworkable or injuriously affected.

Senator O'CONNOR

- I have asked for the recomittal of this clause in order to insert an amendment which I promised to have made at the request of Senator Sargood. It relates to the question of disturbing a well or spring. I move - That the words " mines or underground workings " in paragraph (c) be omitted, with a view to insert in lieu thereof the words "mine, underground working, spring, reservoir, dam, or well"; and that the words "are thereby rendered unworkable or," be omitted, with a view to insert in lieu thereof the words " is thereby."

Paragraph (c) will then read in this way-

Any mine, underground working, spring, reservoir, dam, or well, in or adjacent to such land, is thereby injuriously affected.

Senator Sir Frederick Sargood

- Will the word " thereby " refer to the case of a well or spring, the destruction of which may not be known for six months afterwards 1

Senator O'CONNOR

- Yes ; that does not matter a bit.

Amendments agreed to.

Clause, as amended, agreed to.

Clause 12 -

Immediately after the publication in the Gazette of a notification that any land has been acquired under this Act, the Minister shall cause a copy of the notification to be served upon the owners of the land resident within the Commonwealth, or such of them as can with reasonable diligence be ascertained, either personally or by registered letter posted to their last-known place of abode.

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Senator O'CONNOR

- I intend to propose an amendment to this clause, to carry out a promise I made in committee. That is to say that with the copy of the notification there shall be a plan of the land surveyed. I move -

That after the word "notification," line 4, the words " together with a plan of the land" be inserted.

Senator DOBSON

- This is one of the amendments which I suggested. I did so because I have had a considerable amount of practice in acquiring land for public purposes in Tasmania, and I know that it is absolutely necessary that the land-owner should be served with a copy of the plan of the land which the undertakers propose to acquire. Under the Torrens Act, which is the present mode of transferring land, the transfer is done not by a description, but by a plan. In Tasmania no plan would be received by the Transfer office unless certified

to as correct by a surveyor authorized to make surveys under the Real Property Act. Would it not be well to put in the words -

Certified to as correct by an authorized surveyor.

Senator O'Connor

- That would be an authorized surveyor of a State, but it would be a Commonwealth officer who will do the work under this measure.

Senator DOBSON

- I take it that the land transfer commissioners in each State could certainly give effect to what was done by a Commonwealth surveyor.

Senator O'Connor

- The honorable senator is rather jumping before he gets to the stile, because I propose in a later amendment to deal with the plan. Clause 59 deals with the lodging of the notification which is to have the effect of conveying the title. I do not think it can appropriately be dealt with here. This clause only deals with the serving of the notification.

Senator DOBSON

- The whole foundation is the notification in the Gazette, and annexed to this notification should be a plan. The whole of the conveyance will take place upon that plan. I want to make sure that the plan is correct and will be taken not only under the old system of land transfer, but under the present system in force all over the Commonwealth.

Senator CLEMONS

- I am in accord with what Senator Dobson wants, but I agree with the Vice-President of the Executive Council when he says that that object will better be attained when we come to discuss clause 59. Senator Dobson may safely waive any further discussion upon this clause.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 16 (Costs).

Senator O'CONNOR

- This is a clause which provides for the payment of costs. It was suggested that there should be an amendment, to which I assented, providing that the justice trying the case should be given the power to decide as he thought fit with regard to costs. Therefore I propose to insert an amendment to carry out that object. I move -

That the following words be inserted at the commencement of the clause: - "Unless the justice otherwise orders."

Amendment agreed to.

Clause, as amended, agreed to.

Clause 44 -

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 -

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

By relieving the State of its liability for principal and interest in respect of an equivalent amount of the public debt of the State.

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Senator O'CONNOR

- It will be within the recollection of the committee that when this clause was under discussion previously a great deal of consideration was given to the question of the methods in which the payments should be made to a State. I think it will be recognised that in dealing with the compensation to be paid to the States and the methods of paying that compensation, a somewhat different procedure should be followed than that which would be followed in the case of individuals. The importance of the question of the method of paying compensation is exceedingly great when we remember that the whole of the property which comes over under the Constitution in connexion with the transferred departments will have to be valued, and compensation paid for it, under this clause. The amount of that property, of course, is not definitely ascertained yet, but it amounts to something between £10,000,000 and £11,000,000. Therefore the method in which that payment is to be made is very important. Under paragraph (a) of this clause it is



provided that the Commonwealth may pay to the State the amount of the compensation in cash. No doubt that method will be followed in cases where a small amount of property is required - for instance, an isolated piece of land or anything of that kind. In some cases a cash payment would be desirable. It was pointed out, while the discussion was in progress and after the debate had closed, that paragraph (b) did not afford a satisfactory way of dealing with the question. I think the majority of the committee were of opinion that it would be a very convenient form of paying this compensation to take over a certain amount of State debts. But it was considered that the way the object was expressed in the clause was very vague, and that it was doubtful as to whether we should not get into difficulties in regard to it. A new paragraph has therefore been drafted to take the place of paragraph (b). That paragraph is as follows : - By debiting the amount of such compensation to the Commonwealth, which shall pay to the State by half-yearly payments 4 per cent, per annum on that amount, of which 3 per cent, per annum shall be deemed for interest, and 1 per cent, for a sinking fund ; the Commonwealth to be discharged of all obligations in respect of such compensation when the amount paid on account of sinking fund, accumulated at the rate of 3 per cent, per annum, is equal to the amount of such compensation ; or - The proposition is as follows : - We first take the amount of compensation which is fixed by the court. Upon that amount the Commonwealth pays 4 per cent, for a certain number of years, which is ascertained in this way : As soon as 1 per cent, pays off the whole -amount the payments come to an end. That is to say, the sinking fund pays off the amount owing. The actuarial calculation, based upon tables, is that it will take somewhere about 47 years, that is, calculating it at 3 per cent., with compound interest, and half-yearly rests. The ordinary commercial usage, I think, is to have half-yearly rests, but whether it is to be compound interest with half yearly or annual rests is a matter of detail. I have calculations here, which I need not trouble honorable senators with, but they show that, according to actuarial calculations this debt would be paid off under these circumstances in 47 years. The advantage of the proposal is, that it secures the Commonwealth the wiping out of the debt in a certain number of years, by payments that are really only rather a higher amount of interest than the Commonwealth will be paying on its other obligations, and, so far as the State is concerned, it will lose absolutely nothing, if 3 per cent, is taken as a fair basis of computation. We have already discussed the question that with regard to some of their loans they may be paying considerably more than 3 per cent., but what we have to deal with now is the position of the Commonwealth, and its power to take over these properties, and it seems to me that the Commonwealth is bound to do what is fair and reasonable, according to the ordinary market value of money. Remembering the security which the State has for the repayment of its money, it does not appear to me unreasonable that we should adopt the basis already laid down with regard to the acquisition of property from private individuals, and provide that the interest payable shall be 3 per cent. I am quite in the hands of the committee as to how the amendments shall be moved, and it may perhaps be better to move the sub-clauses one at a time. I think it better to explain now the second proposal I have here. It is -

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 3 per cent. loan of the same currency and of the amount of such compensation -

That form of stating the alternative shuts out all the debatable matter as to the market value, which was raised when the question was last before the committee, as the actuarial equivalent is ascertained from recognised tables. It might be useful to the committee to give an illustration to show how this will work out. In order to make the calculation we have to find out what amount of the loan is equivalent to the amount of compensation upon the basis stated here of 3 per cent. I take the illustration stated here ; Victoria, for instance, has a loan of £5,000,000, bearing interest at 4 1/2 per cent, payable half-yearly, the principal being repayable on the 1st January, 1904. The question is, as to how much of that indebtedness should be assumed as compensation for the property coming from Victoria valued at £2,745,000? If that is assumed to be the amount of the compensation due to Victoria, it has been found by these calculations that £2,632,537 of that £5,000,000 loan is equal to the amount of the compensation. That is to say, taking that Victorian loan at 4 1/2 per cent., and payable on the 1st January, 1904, in order to equal a compensation due of £2,745,000, we would have to take over an amount of £2,632,537 of that loan. Of course it would appear in all cases that the amount we take over is naturally a smaller amount than the amount of the actual compensation.

Senator Playford

- The longer it has got to run, the greater the disparity.

Senator O'CONNOR

- Yes. I do not think there can be any doubt that this is a provision which will be very largely availed of, because all the States are, no doubt, in the position of having loans they would like to get rid of, and, according to the proposal I put before the committee, it does not matter what the currency of the loan is, or what the interest on the loan is. We fix the basis at 3 per cent., and we can determine by a mere matter of actuarial tables how much of a particular loan we have got to take over, in order to equal the amount of compensation to be paid. There is another plan which is a fourth alternative, but as I have not been able yet to place it in print before honorable senators, I shall not refer to it now. In the meantime we may just as well discuss the proposals which are now before the committee, and if the other proposal should not arrive in time, the discussion upon it may be postponed until to-morrow.

Senator PULSFORD

- I notice that since the adjournment for dinner Senator O'Connor has been able to distribute the new clause which he proposes to submit, and it will be convenient if he will explain it to the committee before I proceed.

Senator O'Connor

- It is not before the Chair, and it is quite independent Of the others. They all stand on an entirely different footing.

Senator PULSFORD

- I think not.

Senator O'Connor

- I shall not ask the committee to pass the new clause to-night. The other two clauses stand quite independently of that one.

Senator PULSFORD

- I regret that Senator O'Connor will not oblige us by explaining the new clause, because it appears to me it may have some influence upon the opinion which we may arrive at in regard to the proposals which he has explained. In the first place I wish to propose an amendment which I think may be considered before we come to deal with the sub-clauses. I desire the introductory paragraph of clause 44 to read in this way  
-

The compensation payable to a State in respect of any property acquired under this Act may be paid in such manner as may be agreed upon between the Commonwealth and the State, or may at the option of the Governor-General be paid in any one or more of the following modes : -

Senator O'Connor

- The clause of which the honorable senator has given notice, provides for three different ways in which payment may be made.

Senator PULSFORD

- First of all, in the body of the clause, I propose to introduce an amendment to enable the Commonwealth and the States to try and arrange together before the former takes the power of ruling how it should be paid. I do not think the Minister will object to that.

Senator O'Connor

- No; but there really is no necessity for that power to be granted, because the Constitution expressly provides that unless the two parties are agreed some ' method shall be adopted. Under this Bill there is nothing to prevent the Commonwealth and the State from agreeing. I do not know that it is necessary to provide for it expressly.

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Senator PULSFORD

- If there is in the Bill a power which I do not observe, for the Commonwealth and the States to settle between themselves, obviously the words I want to introduce would be surplusage. If the Minister will "kindly point out in what part of the Bill the matter is dealt with I shall be satisfied at once. With regard to the settlement of the matter of compensation on a 3 per cent, basis, think it is a fair one. The States are paying more than 3 per cent, on some of their loans. The money which should be paid to the States as compensation will not be based on the amount which they have expended, but on the value of the

property taken over. I move -

That, after the word "may," line 2, the following words be inserted: - "be paid in such manner as may be agreed upon between the Commonwealth and the State or may."

The object of my amendment, of course, is to allow a settlement to be made direct between the Commonwealth and the State before calling into force the various modes which will hereafter be agreed upon. Senator O'Connor has referred to the payment which will have to be made on the property taken over at the transfer, but I may point out to him that in all probability the lands so taken over will be small in proportion to the amount of compensation which may become payable in years to come. Therefore we are drawing the clause only to a partial extent to meet the trouble with regard to the property now transferred, but mainly with a view to meet large payments which will have to be dealt with in the future.

Senator PLAYFORD

- The amendment is absolutely unnecessary, because we may be sure that if in any transaction the Commonwealth and the States can come to an arrangement as to the sum to be paid, an arrangement will be made without any words being put in the Bill. The payment under paragraph (a) of the clause as it is will be in money. The clause as it stands is an improvement on the clause as Senator Pulsford desires it to be framed. He desires the committee to adopt these modes of payment -

In money ; or

In debentures or stock of the Commonwealth having a currency of not exceeding 30 years, and bearing interest at 3 per centum per annum ; or

In deposit receipts of the Commonwealth, bearing 3 per centum interest, renewable from year to year, but not exceeding five years in all.

Three per cent, per annum is not a liberal enough interest to pay to the States. It is well known that the States cannot borrow money at that rate. Here we are fixing in the Bill, not for all time, but for a considerable time, a rate of interest which is constantly fluctuating. We are told in the Constitution that we are to deal justly with the States in compensating them for any property we may take. But we are not dealing justly with the States if we give them in exchange for their property something which is less than the market value of money for the time being. The rate of interest for money is practically 3 1/2 per cent. We do not know how long that rate may continue. It certainly is not 3 per cent., and we are not dealing justly or fairly with the States if we compel them to take exactly what we choose to offer them. To ask the States to accept 3 per cent, bonds, when they cannot borrow money at less than 3 1/2 per cent., is not dealing fairly, justly, or liberally with them. I am opposed to the amendment with regard to the 30 years' bonds and 3 per cent, interest. The provision in paragraph (c) of the new clause of Senator Pulsford introduces an element of uncertainty. At the end of five years the money may not be paid, and the deposit receipts may have to be renewed. The proviso of the honorable senator is about the most astounding provision I ever heard of.

Provided that if the mode or modes of payment fixed by the Governor-General be not approved by the State, the State may appeal to the High

Court, which shall decide the mode or modes of payment after hearing such evidence as may be brought forward ; provided further that any mode or modes of payment may, before maturing, be altered should the Commonwealth and the State agree as to such alteration.

Here we are asked to give to the High Court or Federal Court functions which we never ought to surrender. To an irresponsible body which was not created to decide little disputes of this sort we are to delegate a power which properly and rightly belongs to ourselves. We ought in our Acts of Parliament to make such provision that disputes as to payment and modes of payment can never occur. As Senator Pulsford does not propose to interfere with the first part of the clause, these modes are at the option of the Governor-General ; and yet Senator Pulsford puts in a proviso to say that the Governor-General does not decide the matter, which is left to the High Court. I shall oppose the amendment.

Senator CLEMONS

- I also entirely disagree with the amendment of Senator Pulsford, practically for the reasons stated by Senator Playford. The first method proposed we already have in the Bill, and the second method is virtually on the lines Senator Playford has indicated. The machinery proposed is bad to start with, and the working of it will be extremely cumbersome and difficult. I shall oppose the amendment, and I entirely object to the proviso contained in it.

Senator DOBSON

- I hoped I might be able to support the amendment, but Senator Pulsford has prevented me from doing so by saying that if his amendment is not inserted in the Bill the Federal Government is to have the option. Speaking to the question of option I desire to raise the point that I raised when this Bill was previously in committee. I am inclined to think that, although a legal question of State rights is not raised by this clause, certainly a moral and equitable consideration is raised when we are asked to consent to the Commonwealth Government having any option whatever in the method of compensating the States for the value of property taken over.

Senator O'Connor

- It is an option as to the method in which payment shall be made.

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Senator DOBSON

- I know; but to give the Commonwealth the option of paying in four different ways - either in cash or in one of the other three different ways proposed - is to take over property in a manner that is not just, because it gives the Commonwealth all the advantage and places the States at a disadvantage. I only speak from such experience as I have had as a lawyer and a man of business, and I say distinctly that any lawyer who has had transactions in letting or selling land must know that any man who has an option has an advantage. If the market is still and steady, and is not fluctuating, the advantage perhaps is worth nothing ; but it is a great advantage when the market in property begins to rise. The only way we have a right to acquire property is on terms that are just.

Senator Clemons

- The honorable and learned senator is opposing the Bill rather than the amendment.

Senator DOBSON

- No ; I am simply saying that when we take properties from a State - which we have the right to do - we ought to pay that State in cash or in any other way both parties agree to. Therefore I am in absolute accord with the proposal to put in the words suggested by Senator Pulsford ; but he goes on to say that failing agreement, the method of payment is to be at the option of the Governor-General. That is what I object to. I do not think there should be any option about it. The Governor-General ought to be bound to pay in sovereigns for any property taken over, or ought to pay in any other way that the State agrees to. Suppose that the Commonwealth is taking over property to the value of £500,000 from South Australia. That property is represented by Custom-houses and Post-offices. The members of the committee have the option of paying for that property in four different ways. The Treasurer of South Australia may have some debentures falling due, and his Government may make up their minds in Cabinet assembled that it will be to their advantage to receive the £500,000 in cash. When the Treasurer of the State and the Treasurer of the Commonwealth meet, the latter will say - " We are going to pay you in debentures or in any other manner we think fit under the terms of our Property Acquisition Act." The State Treasurer may say - " I have some debentures falling due at this time, and wish to have payment in cash." "But," the Treasurer will say, " we have the option, and ' we will not pay you in cash." There will be a conflict at once. The option will be forced upon the State of South Australia, which, as Senator Playford has pointed out, will be placed at a disadvantage. The State will be paid in debentures bearing interest at three per cent., whereas on this day of grace - 1 1th September, 1901 - no State is able to borrow money at that rate of interest. We know that only lately the State of New South Wales borrowed four millions of money at an average practically of £91, and at a rate of interest of £3 8s. 9d. per Cent. Yet, that being the Current market rate for the mother State, which, of all others, can give the best security - although " comparisons are odious " - we are only to give the States debentures bearing interest at three per cent, well knowing that the average rate of interest is about £3 8s. 9d. I do not think that for the whole of the two hundred millions of money floating now in the shape of loans amongst the States anything less than 3<sup>^</sup> per cent, is being paid. Therefore, I put it whether, in giving this option to the Commonwealth, we are not morally and equitably committing an infringement of what is fair to the States.

Senator O'Connor

- We have already on two occasions decided this matter of the option.

Senator DOBSON

- I think I have the right to point out the matter again. Suppose, in the instance I have already given,

neither the State of South Australia nor the Commonwealth Treasurer will give way. Suppose the South Australian Treasurer says "I will not accept debentures, and intend to have sovereigns," and that the South Australian Government goes to the High Court and argues that under the Constitution when property is taken from a State it must be taken on terms that are just. I take it that if we force an option of this kind down the throat of the South Australian Government the Federal High Court will say that those terms are not just.

Senator Clemons

- What section of the Constitution is the honorable and learned senator referring to 1

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Senator DOBSON

- Sub-section (xxxi.) of section 51 gives power to the Commonwealth to acquire property -

On just terms from any State or person for any purpose in respect of which the Parliament has power to make laws.

We therefore have power to take property on terms which are just; and how can giving the Commonwealth an option of four different ways be just to the State ? Is it not perfectly certain that the Commonwealth Treasurer would have the right, and that it would be his duty on behalf of the whole of the citizens of the Commonwealth, to use which of those four ways would suit himself best? How can that method of acquiring property be just to the States ? Section 85 of the Constitution says -

The Commonwealth may acquire any 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 any 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 admit that the whole mode of compensation can be determined by this Bill ; but I feel sure that the High Court would rule that taking this option for the Commonwealth was not just to the States. Although I admit this point has been discussed before, I hope honorable senators will discuss it again. I look upon it as a matter of fairness to the State I represent. I cannot, in justice to Tasmania or to any other State, consent to giving any option whatever. Therefore, the only proposal I can conscientiously vote for is to say that the property shall be paid for in cash or in such other mode as the State and the Commonwealth may agree upon.

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Senator O'CONNOR

- I would suggest to the committee that the discussion should be confined to Senator Pulsford's amendment. When that is settled we may discuss the amendment which I have put before the committee. The objection I have to the proposal giving the right to settle the matter by agreement is that it is not necessary. The Bill will apply to two sets of circumstances. The first is the estimate of value by assessment, where property is acquired under section 85 of the Constitution, sub-section (iii.) of which 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.

It is quite clear on the face of the Constitution itself that in regard to all that important class of cases there is power under the Constitution for the parties to come to an agreement, and it is only if they do not come to an agreement that this measure is applicable at all. As far as concerns property acquired under this Bill, if honorable senators will look at clause 43, they will see that it is there 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. The value of the title or interest of the State to and in such land shall be estimated as if the State were the proprietor of an estate in fee simple in such land, subject to any estate or interest which any person may at the time of such acquisition have in such land. That is a provision which enables the State to go into court and get the compensation settled by the court. There is no other provision which enables it to be done, and it is done by the power of treating the State as if it were the owner of the property in fee simple. Clause 14 provides that the Commonwealth may be sued in the High Court for the amount of compensation claimed, when there is no agreement as to the

amount of it. I do not propose to go into the question raised by Senator Dobson, but I wish to say a few words in regard to Senator Pulsford's amendment. I do not wish to repeat what has been said by Senators Clemons and Playford ; but as to the three ways in which Senator Pulsford proposes to deal with the matter, we have already decided that they are not possible. As to his proposal for paying for a property in debentures having a currency not exceeding 30 years, and bearing interest at 3 per cent, per annum, in addition to the objections already pointed out, I would observe that if we pay in these debentures we should have to give a large amount of them, and thereby put it into the power of the State at any time to rush our debentures into the market and bring down the value of Commonwealth stock. A similar thing has occurred in Western Australia, where the Government paid in debentures for a railway taken over from a private company, and the company, by making the debentures liquid at once, put them on the market at a time when they brought down considerably the market price of Western Australian stock. We do not want to put the Commonwealth in the position of having its stock treated in that way, especially in the early years of the Commonwealth, when it may have to go upon the money markets of the world. We want to put it in the best possible position, and not have any chance of such a thing occurring as a depreciation of Commonwealth stock. I ask the committee to negative the amendment, and then I will propose the clause which I have suggested.

Senator EWING

- (Western Australia). - I do not think there is any parallel between clause 14, which has been mentioned by Senator O'Connor, and the clause under discussion. Clause 14 deals with the method of ascertaining the amount of bond., not the method of payment. I was very much impressed with the remarks of Senator Dobson, and when I look at the section of the Constitution Act to which he referred, I see that the acquisition of property must be made on terms just to any State. If we give an option to the Government or an individual to pay cash or to pay the same amount on 50 years' terms, can any honorable senator say that those are fair terms 1Senator Pulsford's amendment means practically the same thing, only he limits it to a 30 years' term, and the same argument applies to both. The cash value of the thing is ascertained by arbitration, if necessary, between the State and Commonwealth, and then we calmly turn round and say to the State, " We will not pay you in cash, but we will pay you in bonds of 30 years, or in instalments over 50 years." I submit that such a proposition is unfair in the extreme, because, as Senator Dobson has pointed out, it is quite impossible to say what terms we shall lay down. It is proposed that we shall say that 3 per cent, shall be the interest payable, and 1 per cent, of the 4 per cent, shall go towards a sinking fund. But what might be reasonable to-day might be absolutely unreasonable to-morrow. We all know perfectly well that so far as the States are concerned, most of them have to pay 3f per cent, for their money. They have to lose a considerable amount of money in the flotation expenses, and I might almost undertake to say that when one of the States has floated a loan it comes to very nearly 4 per cent. The consequences are manifest. We are going to take these buildings from the State; the Commonwealth is going to pay them 4 per cent. - practically only the amount they pay for their own loans, and at the end of 50 years we shall have got their buildings, and they will have got the amount of interest they have had to pay, and nothing else. I say ] that such a proposition is absolutely unfair and unreasonable. I believe that the Federal Court of Appeal, if asked for an opinion upon the question, would say that this Bill, making a payment in cash the same as a payment extending over 50 years is not "just terms." Where is the business man in this House who does not know that a payment in cash is always of a smaller amount than a payment extending over a long term of years ?

Senator Clemons

- It depends on the rate of interest.

Senator EWING

- Whatever the rate of interest is, in a reasonable way, almost invariably a person who buys for cash can get property for a less amount of money than a man who is going to pay over a term of even five or ten years. In Western Australia most of the public buildings have been built Out of revenue.

Senator Pearce

- What about the Agricultural Hall ?

Senator EWING

- Senator Pearce smiles; but if he looks over the revenue estimates 0 Western Australia he will find that nearly all the public buildings there, during the last five or six years, have been built out of revenue. But

most of the States have borrowed money to erect their public buildings. Those loans come due, some perhaps in five years, and some in ten years, and the proposal is that the Commonwealth shall take the assets for which the money has been borrowed and calmly give the States the amount of interest they have to pay on the loan and give them nothing at the finish. I think that the best we can possibly do is to reject the whole of these amendments, not only that submitted by Senator Pulsford, but those submitted by Senator O'Connor as well, and leave the matter to be dealt with in the Bill as it originally passed the Senate. I think the Bill, as originally passed by the Senate, comes nearer to that which is just and reasonable than anything we have now submitted. As the Bill stands, the first proposition is payment in cash, and the second proposition is by relieving the State of its liability for principal and interest in respect of an equivalent amount of the public debt of the State.

Senator O'Connor

- That is the same as my proposed amendment (c), but my amendment puts the thing in a clearer way.  
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Senator EWING

- The only reason I would at all favour this is that it might at times happen that the Commonwealth would not be able to pay in cash, and it is, therefore, desirable to provide a loop-hole out of such a difficulty. The most reasonable proposition in that direction is certainly that contained in the Bill as it stands, because the Bill as it stands says we must take an equivalent amount of the public debt of the State ; that is an amount of the State debt at the time we make the arrangement, which will be equivalent to the money for which we are going to substitute it, and it is not bound fast by a rate of interest which might be reasonable to-day and unreasonable tomorrow. The 3 per cent, of to-day might be most unreasonable to-morrow, and therefore I prefer that the committee should leave the question as it is dealt with in the clause as already passed by the Senate.

Amendment negatived.

Senator O'CONNOR

- I move-

That the paragraph (b) be omitted, with a view to insert in lieu thereof the following : - "(b) By debiting the amount of such compensation to the Commonwealth, which shall pay to the State by half-yearly payments 4 per cent, per annum on that amount, of which 3 per cent, shall be deemed to be for interest and 1 per cent, for a sinking fund ; the Commonwealth to be discharged of all obligations in respect of such compensation when the amount paid on account of sinking fund, accumulated at the rate of 3 per cent, per annum with half-yearly rests, is equal to the amount of such compensation ; or."

That means that compound interest is to be calculated every half-year instead of every year. That is only fair, I think, in arriving at a decision as to what the just amount of the compensation is. In reference to what Senator Ewing has said, I may add that paragraph (c), with which I propose to follow this amendment, is putting the same idea as is now contained in paragraph (b) of clause 44 in the Bill in another form, but I will deal with that later on. The proposition I now make is to pay the State 4 per cent, on the amount of compensation, 1 per cent, of that to go to a sinking fund by which the original liability will be wiped out. Under ordinary circumstances, with half-yearly rests and this percentage, it is calculated from the tables that the amount will be wiped out in 47 years. The Commonwealth will then have wiped out the whole of the debt for principal and interest. The State will be in the position, if it chooses to take advantage of that provision and apply the 1 per cent, to the sinking fund, to wipe out its debt.

Senator CLEMONS(Tasmania).- With regard to what Senator O'Connor has just said, I may point out exactly what paragraph (b) means. It means neither more nor less than paying the States by 3 per cent, debentures having a currency of 47 years. I should like to remind the Senate that when we discussed this matter before, we decided by a large majority that it was unfair that the Commonwealth should have the option of paying the States off by debentures bearing interest at 3 per cent.; and, if honorable senators are consistent, they will not hesitate one moment about rejecting the proposed amendment. With regard to the proposed paragraph (c), which Senator O'Connor has rightly pointed out is only in substitution for paragraph (b) as at present in the Bill, it seems to me that it is an eminently desirable one. It puts in a clear and decisive way what we all want, and contains all that has been demanded by those senators who have spoken on behalf of States that have borrowed money at 4, 4 1/2, or 5 per cent. It will meet the requirements of any State that has borrowed at any rate of interest, and we ought all most certainly to

support it. I go back now to paragraph (b), the amendment now before the committee, and I ask Senator O'Connor, seeing that it is admitted that I have correctly interpreted the clause in saying that it means paying the States by 3 per cent, debentures having a currency of 47 years, and seeing also that a majority of the committee were opposed to giving the Commonwealth the option of paying by 3 per cent, debentures, whether he will not consent to withdraw the amendment.

Senator O'Connor

- I think it is a different proposition altogether. It comes in effect to what the honorable and learned senator says, but it provides for the payment of the principal at the same time as the interest, and enables the State to put by 1 per cent, to wipe out the liability.

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Senator CLEMONS

- I quite admit that it provides for paying the State annually 1 per cent., but Senator O'Connor will agree with me, and with many honorable senators, that there is a strong disinclination to hand over more money in cash to the State than is desirable, and if the States were to use this 1 per cent, for their own purposes, they would be doing something that is not desirable. On the other hand if they do not use that 1 per cent, in that way, the amendment goes back to the original proposition of offering the States payment by 3 per cent. Commonwealth debentures, and we all agreed that that is unfair, just as we all agreed that the States should not have an opportunity of handling too much cash. We agreed at the same time to paragraph (a) of the clause, to enable the Commonwealth to pay over certain small sums it might be desirable to pay in cash. We laid stress on that fact in considering the clause, and it was never contemplated that under paragraph (a) the Commonwealth should pay the States anything but small sums, and it was desired that the Commonwealth should have that privilege, because it might at times be found convenient. This new proposition is really a proposition for payment by 3 per cent, debentures with a 47 years' currency, or it is something worse - the handing over to the States of cash, which the committee previously agreed is undesirable. I should like to answer a few words used by Senator Dobson when discussing Senator Pulsford's amendment. The honorable and learned senator laid great stress upon it, and he practically implied that it was an act of injustice to give this option to the Governor-General in Council. I entirely disagree with the honorable and learned senator upon that point. I point out that the granting of an option is not in itself in any way an unjust act, but the injustice will arise if a single term in that option is an unjust one. The grant of the option itself is not in any sense a breach of our Constitution, and what we have to consider is whether it contains any terms which, if applied by the Commonwealth, would constitute an act of injustice towards any of the States. I should like very much to see the committee adopt paragraph (a) as already passed, and the new paragraph (c) which is to be proposed by Senator O'Connor. I contend that that option does not contain a scintilla of injustice.

Senator Dobson

- The new paragraph (b) proposes a gross act of injustice.

Senator CLEMONS

- I entirely agree with the honorable and learned senator, and I am glad to hear that expression of opinion because I am entirely opposed to the new paragraph (b) ; but there my opposition stops, and I hope the committee will adopt the amendment in new paragraph (c), and reject the one marked (b). We shall then be doing no act of injustice to any of the States, and we shall be properly considering in advance some of the requirements of the Commonwealth, which it is our duty to consider, as well as the requirements of the different States.

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Senator Sir JOHN DOWNER

- There is no doubt that the proposed amendment (c) will meet some of the objections that have been made, particularly the objection that we will be dribbling out small sums of money to the States which must inevitably be treated as ordinary revenue, and will never reach the end for which that money is intended. But I say at once that I object to all these amendments. The clause, as it stands now, represents entirely the understanding under which we entered into federation, and we ought not to depart from it. I agree entirely with what I heard Senator Ewing say just now. When we came into this Federation, it was a term and a necessity of it that certain public institutions should be taken over. There were questions as to whether they should be taken over at cost, and whether they should be paid for at a



fair value, and those questions were settled. Then the question came up as to how it was to be done, and incidentally to that, whether a State debt should be taken over, and it was a general understanding undoubtedly that, if the condition of the Commonwealth prevented them paying money, they should take over an equivalent amount of the State debt. That was an understanding, and it is embodied in the clearest possible language in the Bill as we have it now before us. Under the clause as it stands, the compensation payable to a State may be paid by relieving the State of its liability for principal and interest in respect of an equivalent amount of its public debt. That is clear and understandable, and, in my opinion, it requires no further alteration. Under the Bill, as passed, we enable the Commonwealth to pay the State in money, and there is an end to it ; or to take over a certain portion of the public debt of a State. But now we are going to fix an arbitrary rate quite irrespective of the terms on which the States hold these properties, which have all been built out of borrowed money. The very essence of our understanding was an indemnity to each State in respect to any public institution taken over. How are we going to get our indemnity ? Not by the taking over of the debt incurred in respect of the particular line of expenditure, but by fixing an arbitrary rate, which is admittedly lower than the rate which the State has to pay, and allowing the Commonwealth either to pay the money, to which we have no objection, or to hold the liability on terms lower than those which the State has to pay in respect of that institution. That is not an indemnity at all ; that is an evasion, and I am entirely against it. In the first place this 4 per cent., with a 1 per cent, sinking fund, will work very injuriously, because the money will not be devoted to the sinking fund at all, but to ordinary expenditure. Three per cent, may be enough or it may be too much. Carry out the original understanding. Let the Commonwealth either pay to the State a fair value for the buildings or let it take over an equivalent amount of the debt, and then the matter is finally dealt with. I think the clause as it stands would work exceedingly well, and lead to no misunderstanding ; but the attempt of Senator O'Connor to reduce it to more precise dots will lead to great disaffection amongst the States, will depart from the original understanding on which the Commonwealth was established, and will, in addition, if carried out in its present form, put in the hands of the States money which will be expended in the ordinary way. What is the good of paragraph (c)? -

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 3 per cent, loan of the same currency and of the amount of such compensation.

That is not a fair price ; that is not an indemnity. It is not only unjust, but it is illegal ; it is against the very spirit of the Constitution Act. I sincerely hope that the committee will agree to the clause precisely in its present form.

Senator Sir FREDERICK SARGOOD

- Senator Downer, I think, stated that the transferred properties had been purchased or built out of loan money.

Senator Sir John Downer

- Most of them.

Senator Sir FREDERICK SARGOOD

- That may apply to other States, but it does not apply to Victoria.

Senator Glassey

- It certainly applies to Queensland.

Senator Sir FREDERICK SARGOOD

- The only loan money which has been paid on account of the properties taken over from Victoria is £100,000 in connexion with the Cerberus. Every building which was taken over- was built entirely out of revenue.

Senator Sir John Downer

- Were all the post-offices paid for out of revenue ?

Senator Sir FREDERICK SARGOOD

- Yes; the only public buildings which have been paid for to any extent out of loan money have been public schools. At the present time the States have large expenditures from revenue or loan account, invested in what are practically dead assets, which do not bring in a cent of rent, and which the Commonwealth proposes to take over.

Senator Sir John Downer

- What sort of things ?

Senator Sir FREDERICK SARGOOD

- The post-offices and other properties.

Senator O'Connor

- The honorable member calls a fort a dead asset.

Senator Sir FREDERICK SARGOOD. Yes, and a number of other properties which have been taken over. Whatever rate is paid by the Commonwealth -will be paid for a term of 47 years, and that will be a clear gain to the States. They will be receiving cash to the amount of 3 or 3 1/2 per cent., and to that extent undoubtedly the States will be in a much better position. They are turning dead assets into liquid assets, which will bring in a certain sum to the revenue.

Senator Dobson

- Will not that interest at 3 per cent, be debited to the expense of each Post-office and each Customs-house in every State?

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Senator Sir FREDERICK SARGOOD

- No ; to the State it will be a gain. There is no doubt that on a former occasion we were perfectly unanimous that it would be very unwise to place in the hands of either the Commonwealth or a State the power of paying or receiving large sums in cash, but it was recognised that it would be necessary to give to the Commonwealth the power of settling comparatively speaking small transactions. The next question is what we should do with the large transactions which apparently will tot up to £10,000,000 or £12,000,000. Here, I think, with all due deference, that Senator Clemons did not quite state the case as to the proposed amendment of paragraph (b). The paragraph (b), which we disagreed with, proposed to give debentures. This new one does not propose to give debentures.

Senator Clemons

- The exact equivalent.

Senator Sir FREDERICK SARGOOD

- I beg my honorable friend's pardon. The debentures provided for in the original paragraph (b) were documents that could have been taken by the various States and sold in the markets. The debentures provided for in this new paragraph cannot be sold. There is nothing provided for here which can be sold.

Senator Clemons

- No one wants to sell them.

Senator Sir FREDERICK SARGOOD

- That was the reason why we disagreed with the previous paragraph (b). "We saw that the danger was that the various States would get into their hands a very large amount of debentures, and be able to go into the market and do with them exactly what the honorable senator pointed out was done in Western Australia. So far as the proposed amendment of the paragraph is concerned, there will be no debentures passed and therefore there can be no sale. The only money which the States can receive will be 4 per cent., of which 1 per cent, is to go to a sinking fund, but we all know pretty well that the 1 per cent, will be treated as revenue, and spent. I do not think that new paragraph (6) as a whole is a wise provision to agree to. It is better than the paragraph which we struck out, but it is so little better than the provision in the Bill that I think that we might safely lay it aside, and deal solely with paragraph (c). Senator Dobson takes exception to the option being in the hands of the Commonwealth. It must be in the hands of some one. There must be finality somewhere, and I take it for granted that the honorable and learned senator does not want the parties to go to law in every case where there is a difference of opinion.

Senator Dobson

- It ought to be payment in cash, or as may be agreed.

Senator Sir FREDERICK SARGOOD

- The committee has agreed that it is very undesirable that there should be payment in cash, for many reasons. Certainly it is undesirable that the State should have the power of demanding cash.

Senator Dobson

- I thought that was a joke.

Senator Sir FREDERICK SARGOOD

- My honorable and learned friend, as an old Minister, should know that it is no joke for a Government to

suddenly hand over a large amount. It will be utterly impossible for any Government to husband the money, because the Parliament will insist upon it being spent. Senator Downer thinks as regards paragraph (c), which we have passed, the words " equivalent amount " would meet the equities of the case. Supposing, for the sake of argument, that £20,000 worth of property was taken over from a State. Does he propose that £20,000 of outstanding debentures should be taken over by the Commonwealth ?

Senator Sir John Downer

- No. Our Post-office was built out of loan money, and let the Commonwealth take over the Post office with the liability on it. That was the very essence of the agreement with the States for federation.

Senator Sir FREDERICK SARGOOD

- Is it possible in the various States to ear-mark each loan ?

Senator Clemons

- No.

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Senator Sir FREDERICK SARGOOD

- What would you do in the case of Victoria, where we have no loan to ear-mark ? It will be recollected that in a previous discussion the question arose as to what debentures were to be taken over. I think that a State will want the debentures carrying the highest rate of interest to be taken over - that is 4 or 4-1/2 per cent, debentures. What is the financial meaning of the word " equivalent " ? You must have some basis to calculate your equivalent upon; whether it is 3 or 3-1/2 per cent. You cannot work out the equivalent of anything unless you have a starting point. This clause has been carefully considered by financiers who ask - "What does equivalent mean ? What is the rate of interest upon which the actuaries have to calculate ? " Unless you fix a certain rate, whether it be 3 or 3-1/2 per cent., it is utterly impossible to calculate an equivalent amount. That is why it appears to me that new paragraph (c) gets over the difficulty. While I think that paragraph (J) might very well go by the board, paragraph (c) is to my mind a distinct improvement on the one which we have passed.

Senator MACFARLANE (Tasmania). When the clause was first before the committee I objected to the words " equivalent amount," and it has been discovered on mature thought that there is no equivalent amount of which, to make a basis of calculation. For that reason the clause cannot well be allowed to remain as it stands. I support the insertion of the new paragraph (c). I think that paragraph (6) is not fair to the States. It is very unjust that they should not have any actual, tangible asset for what they give up. I hope that Senator O'Connor will withdraw his amendment to paragraph (6), or, at all events, that it will not be carried. - I certainly prefer the new paragraph (c) to the present one. ' ' '

Senator DE LARGIE

- I think Senator Sargood has painted the financial position of Victoria in rather glowing colours.

Senator Sir Frederick Sargood

- There is nothing to boast of now ; I merely stated facts.

Senator DE LARGIE

- On what works has the public debt of £48,000,000 or £49,000,000 been spent ?

Senator Sir Frederick Sargood

- Railways, waterworks, and schools.

Senator DE LARGIE

- I should think that if Victoria had been building her public works out of revenue, she would have had a great deal more to show than that.

Senator Sir Frederick Sargood

- I assure the honorable senator that that is a fact.

Senator DE LARGIE

- I accept the honorable senator's statement for the time being, but I feel sure that very few of the States can say so much. I would have more cheerfully supported the proposition of the Government if they had left out paragraphs (a) and (6), because I consider that temptation should be put as far as possible out of the way of the State Treasurers. Whenever a State property is taken over, the best and most economical mode of compensation, both to the Commonwealth and to the State, is to take over so much of the public debt of the State as it represents. If that course is pursued, justice will be done to the State, and no injustice to the Commonwealth. It ought to be the aim of Australian public bodies to make an effort to pay

a little of the principal as well as the interest on the money which has been borrowed for the construction of public works. If the Commonwealth has to pay ready cash to the State Treasurers it is almost a certainty that the money will be squandered. The interest on the loan may be paid ; but certainly the principal will be left for somebody else to pay. I hope that paragraph (6) will be omitted, and that the Government will see their way to omit paragraph (c).

Senator GLASSEY

- I know of no subject which commanded more attention during the federal campaign in Queensland than this very one. It certainly required a good deal of ingenuity on the part of those who were advocating federation to induce the people to believe that the transferred properties would be paid for on fair and equitable principles. Senator Downer put the case remarkably well. I think that one of the understandings before federation was that if any property were taken over the States would be paid not merely the cost of the property, but a fair value to be agreed upon between the two parties. Senator Sargood described a fort as a dead asset, but I do not regard it in that light at all.

Senator Sir Frederick Sargood

- It does not bring in anything.

Senator GLASSEY

- It does not follow that because it brings nothing in it is not a valuable asset.

Senator Sir Frederick Sargood

- I did not use the word " valuable."

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Senator GLASSEY

- Suppose we take the case of a fort. There are some in Queensland which have been erected at considerable expense. They are not only for the benefit of Queensland, but of the whole of Australia. Although they cost a considerable sum of money in the first instance, it does not follow that the Commonwealth is going to pay the full value. But it is going to pay a reasonable price, according to the terms entered into by the Commonwealth on the one side and the State on the other. Every State in the union is not so favorably situated in regard to expenditure of loan money as Victoria. The bulk of our buildings, our post-offices, schools, Treasury, and other buildings about Queensland, have been built out of loan money. I believe that in Victoria schools and some other buildings have been paid for out of loan moneys, but the post-offices and others have been paid for out of revenue. It will be manifestly unfair for the Commonwealth to take over from any State properties which may have cost a considerable amount of money in the past, unless they are paid for in cash or in liabilities taken over. I do not agree with Senator De Largie that the Treasurers of the States are such spendthrifts that they cannot be intrusted with sums of money large or small. Even supposing that the Commonwealth were to pay in cash I am certain that so far as Queensland is concerned, the Treasurer may be trusted to spend the money in such a way as would be highly beneficial to the State. We ought to aim at giving the States a fair payment for property taken over, and to fix 3 per cent, would be manifestly unfair; but in regard to how the payments are to be made the matter is one that concerns the States very little.

Senator PLAYFORD(South Australia). - The point we have to consider is the striking out of paragraph (b). I think the paragraph should either stand as proposed by Senator O'Connor, or should be altered so as to make the interest 3 j per cent. Unless I am perfectly sure that the interest will be made 3£ per cent., which is only a fair rate, I shall certainly vote for paragraph (6) standing as it is. I prefer paragraph (c) from the fact that it defines the basis upon which this computation shall be made, whereas the present paragraph leaves it undefined and dependent upon the word "equivalent." If we have a fixed sum upon which the " equivalent " is to be based, and the rate of interest is 3£ per cent., the conditions would be fair. I am against the paragraph proposed to be inserted. It is not wise to have too many options, because options are always unfair upon the man who has the option as against the man who gives the option. If one has a house to let, the man who takes it generally wants it for three or five years, and is very fond of getting a clause put in the lease which gives him the option of renewal at the same rental. In a case of that kind, it is " heads I win and tails you lose " so far as he is concerned. If property goes up in value, he takes his renewal, and if it goes down he does not renew. We have to be specially careful of putting terms in the Bill that are fair and just to the States. The 3 per cent, provision will not be just to the States. Three and a half per cent, would only do bare justice under present conditions. I should very much like to have the

matter put in the position Senator Downer alluded to, in which he read the word "equivalent" to mean that if the bargain is concluded now, the ordinary rate of interest that is received on loans is taken, and, if it rises or falls as time goes on, and the bargain is not concluded, the Commonwealth would get the advantage of a fall, and the State would get the advantage of a rise. As to the sinking fund, it will simply go into the hands of the State Treasurers in dribbles, and will be taken into the ordinary revenue, so that at the end of 30 or 40 odd years the States will find themselves in the position that the 4 per cent, interest will cease, they will have lost their property and have no more interest to come in, whilst the sinking fund, which they ought to have so carefully nursed will have been dispersed. Thus the States will be worse off in the end than in the beginning.

Senator O'CONNOR

- In dealing with this matter, we are concerned with very large figures. We should remember that we are here not only to see that the States get every penny which we think they are entitled to, but we should remember also that we are legislating for a definite security to be given by the Commonwealth in the most difficult period of its existence.

Senator Charleston

- Still, we must be just.

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Senator O'CONNOR

- But in doing justice we must be very careful not to cripple ourselves at the outset. Something has been said as to the understanding arrived at at the time of the Federation. The understanding was that which is contained in the Constitution itself. That understanding on the one hand gave the Commonwealth power to acquire land on just terms from any State, and it also forced upon us the necessity of taking over a very large amount of property from the States - and that not under the provisions of any Act which we may pass, but under the provisions of the Commonwealth Constitution itself. By section 85 of the Constitution we are compelled to give compensation for the property we take over. This same Constitution has given us a means of revenue to begin with - the Customs duties collected - but at the same time it has imposed upon us the limitation of the Braddon Clause; and we have to remember, in considering the payments - we are to make on account of the expenditure of the Commonwealth, that it is impossible for us to expend more than a quarter of the net revenue which comes to us from the Customs. We have also to undertake the obligation of paying the different expenses incurred upon the transferred services. Therefore, we have to take the whole Constitution as the basis upon which we are to do justice to the States in regard to property taken over.

Consequently, we have to consider this matter not from the point of view of what we think the States ought to get, or the way they would like this money to be paid; but we have to consider it from the point of view of the Commonwealth, and to remember that we are laying down the lines upon which the Commonwealth will have to pay out of its revenue in the early stages of its existence very large amounts of money. I do not intend to go into details, but I would remind the committee of some figures, which are an estimate only, but - which are fairly accurate, as to the responsibility we have to incur. It is estimated that the total amount of the property to be taken over under the transferred services will be something like £1 0,445,000 altogether. Interest upon that at 3 per cent, would be something like £313,000 per annum.

Senator Playford

- - The Commonwealth has £2,000,000 which it may spend under the Braddon clause.

Senator O'CONNOR

- I know; but we do not want to spend it all in interest. We have many other things to spend it upon. It seems to me that the only thing in the mind of some honorable senators is that we have simply to be careful to give the States everything they want, and to see that they do not suffer any inconvenience. But on the other hand we have to see that this Constitution is worked out in accordance with its spirit, and to make our payments to the States, and our arrangements to pay them, on such terms as will not cripple the Commonwealth at its outset. With regard to the details of the property taken over they are as follow: - From New South Wales the property taken over will amount in value to £3,200,000; from Victoria, £2,745,000; from Queensland, £1,590,000; from South Australia, £1,665,000; from Tasmania, £436,000, and from Western Australia £809,000. How will that be met? Of course it is out of the question, as every

one sees, that payments for those properties should be made in cash. The mere statement of those figures ought to satisfy my honorable friends who have been clamouring that there is only one way in which the property is to be paid for - namely, in cash, unless the Commonwealth and the States concerned can agree to another mode of payment - that it would be absurd to put the Commonwealth in the position of having to pay cash.

Therefore there must be an option with the Commonwealth.

Senator Downer. - No one doubts that.

Senator O'CONNOR

- Doubts have been expressed.

Senator Dobson

- I certainly doubt it.

Senator O'CONNOR

- I say that those figures I have quoted are a perfect answer to any one who suggests that there, should not be a complete power in the Commonwealth to say how that money should be paid - whether by debts taken over or in some other way. Assuming that the interest will be paid, that interest will be Commonwealth expenditure or new expenditure, and it will be distributed in accordance with the population of the States pro rata. The result of this will be that in the case of several of the States they will have a certain amount of money coming to them, but they will have to pay a certain amount, and there will be a certain proportion to be deducted in order to bring out the net amount which the State is entitled to. But still, even after making those allowances, there will be a very large amount which will be payable by the Commonwealth to some of the States. I am not at all insensible to the strength of the argument used as to paragraph (b). This is a proposal which finds great favour with the Treasurer, and it has been proposed here deliberately as a way in which both the Commonwealth and the States may be served, because it enables the States to have a sinking fund by which the amount of their debt may be cleared off, and at the same time it will relieve the Commonwealth of its liability.

Senator Sir JOHN DOWNER

- I understand that they have no debt of the kind in Victoria, as all their public offices have been built out of revenue.

Senator Sir Frederick Sargood

- It will be a clear gain to Victoria.

Senator O'CONNOR

- I did not know there was a State in such an exemplary position. My understanding is that in all the States except the model State - it is not necessary to say which State that is--

Senator McGregor

- South Australia.

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Senator O'CONNOR

-- there is no apportionment of a loan to the particular work to be done. In all the States except that one there is a borrowing on the general credit of the State itself. Although there may be loans of different amounts, different currencies, and different rates of interest, the borrowing is upon the general strength of the credit of the State. Therefore I do not see that there is any way in which we can apportion the particular loan to the work to which it has been applied.

Senator Sir John Downer

- There is not the least difficulty.

Senator O'CONNOR

- Not in South Australia; but the other States are not in the same position. I can see that there are some objections to be urged against paragraph (b). With regard to the other proposal, to which I think most honorable senators are favorable, there has been a question raised about the interest. That may make a very serious difference in the calculations that have been drawn up, and the matter is of such importance that, being without any direct instructions or advice from the Treasurer, I certainly do not feel disposed to consent to a proposal which may involve the Commonwealth in the expenditure of a very large amount of money. Therefore, without assenting in any way to the propositions that have been made, but thinking that the matter is certainly worthy of consideration, I propose that progress be reported, and I think I shall

be in a position to-morrow to state definitely the attitude which the Government will take up.

Progress reported.

ADJOURNMENT

Public Service Bill

Vice-President of the Executive Council

Senator O'CONNOR

. - I move. -

That the Senate do now adjourn.

I may say that it was entirely owing to an inadvertence, for which no one is to blame, that the debate on the second reading of the Public Service Bill closed before some honorable senators had been afforded an opportunity of speaking upon the very important principles of the measure. The Government is very averse indeed to any honorable senator being deprived of his right of discussing the real principles of the Bill. The discussion of the principle will really centre round clause 5 and several other clauses in the some part of the measure. I desire to state now that the Government will not only not deprecate, but invite the fullest possible discussion on that portion of the measure, so that any honorable senator who has not had an opportunity of discussing it on the second reading will be able to do so in committee.

Senator Glassey

- There must be no limitation.

Senator O'CONNOR

-I cannot say more than that. The whole principle of the Bill is involved in that particular clause.

Question resolved in the affirmative.

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21:15:00

Senate adjourned at 9.15 p.m.