

<url>https://www.historichansard.net/senate/1901/19010712_senate_1_2</url>
1901-07-12

Senate.

The President took the chair at 10.30 a.m., and read prayers.

QUESTION

COMMONWEALTH STATISTICS

Senator DOBSON

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

If it is the intention of Ministers to arrange with the Premier of each State to convene a conference of statisticians, with instructions to devise and report upon a scheme for securing an absolutely uniform basis for collecting, preparing, and issuing statistics throughout the Commonwealth 1

Vice-President of the Executive Council

Senator O'CONNOR

- The question of having statistics collected and published in a uniform manner, and in such a way as to be of federal use, is engaging the attention of my honorable (colleague, the Minister for Home Affairs.

BASS' STRAITS CABLE

<page>2462</page>

Ordered (

(on motion by

Senator Walker

for

Senator

Macfarlane) -

That the Postmaster-General lay on the table of the Senate a return showing the sum paid to the Eastern Extension Telegraph Company for cablegrams over the cable between Victoria and Tasmania, between 1st April and 30th June last; also the amounts paid for each of the years 1896 to 1901 inclusive, and a copy of the existing contract with the company as to the non-laying of a cable by the Commonwealth or others.

Ordered

(on motion by

Senator Keating,

Tasmania) -

That, a return be laid upon the table of the Senate showing particulars of the amounts from time to time paid by the Government of Tasmania to the Eastern Extension Telegraph Company in connexion with the Buss Straits cable, both by way of subsidy and also under the message receipts guarantee.

Senator Drake

laid on the table the following paper - *

Return to the order of the Senate showing the sum paid to the Eastern Extension Telegraph Company for cablegrams over the cable between Victoria and Tasmania, between the 1st April and 30th June last; also the amounts paid for each of the years 1896 to 1901 inclusive, and a copy of the existing contracts with the company as to the non-laying of a cable by the Commonwealth or others.

STATE INSURANCE AGAINST INDUSTRIAL ACCIDENTS

Senator Lt Col NEILD

- I move -

That, in the opinion of the Senate, it is desirable that State insurance against industrial accidents should be established throughout the Commonwealth.

I should like to explain that- the motion I move is not quite the same as that standing upon the notice-paper in my name. I have omitted the words -

During the present session, which stand at the end of the motion upon the paper. I recognise that in the present condition of public business in both Houses of the Legislature it would be useless to move the latter part of the motion, asking for the introduction of a measure during the present session, and in order that the question may be dealt with on its merits I have amended the motion. Perhaps there may be in the minds of some honorable senator some slight misapprehension through a possible confusion of terms.

My motion does not indicate, or desire to indicate, that in the view of the Senate the separate States should deal with the great question of industrial insurance, but that State insurance should be established by the Commonwealth. I am aware that State insurance, as generally understood, is insurance with the Government of the country. In this case it will be insurance with the Commonwealth. But the term "Commonwealth insurance" would be so absolutely novel and so utterly misapprehended - probably in the States, and even in Parliament itself - that I prefer to stick to the well-known phrase "State insurance" - meaning by that national insurance.

Senator Drake

- Is not the honorable senator going contrary to the Constitution 1

Senator MCGREGOR

- Why not say "national insurance" ?

Senator Drake

- The Constitution Act says -

Insurance other than State insurance.

Senator Lt Col NEILD

- There is a further provision of the Constitution which shows that the sub-section quoted by the Postmaster-General means that the Commonwealth Government has no power to interfere in schemes of State insurance, established by the separate States ; that, I take it, is the meaning.

Senator Drake

- It is unfortunate, it seems to me.

<page>2463</page>

Senator Lt Col NEILD

.- It is. I think the phrase of the Commonwealth Constitution Act itself is unfortunate. There is in the Act a conflict of terms, because the word " State " is used in two places meaning evidently in one place " Government," and in the other the "local or separate States." In rising to address myself to this proposition, I desire to point out to the Senate that the subject is of the utmost importance: first, to those engaged in industrial pursuits ; secondly, to all employers, including the Government itself; and, thirdly, to the entire community. State insurance in respect of industrial accident has not hitherto attracted much public attention in Australia. In New South Wales, at any rate, I believe that I was the first public man to make this subject an active political question. During my candidature for a seat in the Senate, I addressed myself to the question at every meeting of the electors. I promised then to do that which I am now humbly attempting to accomplish - to bring this great political and social question before the notice of the Federal Parliament. Some four years ago, empowered by a commission under the great seal of New South Wales, I visited Europe to investigate the question of old-age pensions and charitable relief. It was then that my attention was most strongly drawn to industrial insurance. I found that the question was so entirely interwoven with provision for old age and the distribution of charitable relief that I perhaps stretched the limits of the authority granted to me, and reported as fully on industrial assurance as I did upon the subjects more specifically set out in my instructions. I had an opportunity of investigating those matters practically on the spot. I had the rare opportunity of securing from diplomatic and business sources a copy of every Act on the subject of Industrial insurance that had been passed in every European country, and a copy of almost every measure on the question which had been introduced in the Legislatures of the Continent. For the first time, these documents were all translated into the language that we speak, and taking these facts into consideration, I believe that I have had unrivalled opportunity of gaining a complete knowledge of what has been attempted for the benefit of the workers in the great countries of Europe. My inquiries have so thoroughly convinced me of the urgency of the insurance of workers by and with the State that I have become a strong advocate of . the principle. I hope that honorable senators who have or may peruse my report, and who do me the honour of hearing what I have to say on the subject, will become as warmly interested in it as I am. I trust that honorable senators will give me their influence and assistance in promoting the accomplishment of a scheme designed to do so much for employers and employes, and, indeed, for all among whom it is inaugurated. State insurance is the evolutionary product of efforts made during many -centuries past to cope with accidents and injuries inseparable from industrial pursuits. Here let me draw attention to the antiquity of some of the provisions made, not only by the workers themselves, but by those from whom a benevolent regard for the workers

would scarcely be expected. In France, for instance, it is stated by a high legal authority that - The legislation relative to mines - contains special provisions concerning workmen. The working of mines is the subject of intervention and incessant watchfulness on the part of the State and of the general body of mining engineers.

Senator Glassey

- What is the date of that enactment ?

Senator Lt Col NEILD

- I am not quoting from an Act of Parliament, but from a report furnished very recently by the legal adviser to the British Embassy at Paris. Full particulars of the statement are to be found in my report. The report continues -

This surveillance is at one and the same time preventive and repressive, for the preservation of buildings and the safety of the ground, and of private individuals. Thus, in case of accidents, workers of mines are compelled to have upon their establishments medical appliances and means of succour, and in some workings on an extensive scale, a special surgeon.

Already in 1604 a special decree of the ' Conseil du Roi had ordered that one-thirtieth of the net proceeds of each mine should be applicable to the maintenance of one or two priests and of a surgeon, and to the purchase of healing appliances in aid of workmen who had met with accidents. This order has been confirmed by laws passed during the last century. For instance, there was a law passed on the 21st April, 1810, a decree made on the 3rd January, 1813, and a Royal order on the 26th March, 1843. Although it may appear to be a strange order to be made in Council, it shows at least evidence of a care and regard for the preservation of the lives and safety of workers in the mines on the part of a court which we have always been taught to regard as licentious and wholly indifferent to anything but its own pleasures. They sought to carry out their object in a manner which was, perhaps, quite consonant with the views of the age, and no equivalent appropriation according to the local sentiment of to-day has been made within the limits of the Commonwealth.

Senator Glassey

- Most of our advanced thought on industrial matters comes from France.

<page>2464</page>

Senator Lt Col NEILD

- And from Germany. The report goes on to say -

Let us add, that in the larger number of mines in France, mutual assistance and providential funds have been organized in the interest of the workmen ; they are in general supported by the deduction of 3 per cent, upon the amount of the wages. These funds are, moreover, almost every year the object of donations from the owners of the mines.

It is to Germany that we may look for the most complete systems for coping with industrial accidents. I think it will, perhaps, be more useful for me to quote a few paragraphs of my report than to attempt to deal with the same facts without quoting from it. The matter is dealt with more concisely than I could hope to put it in the course of a speech. I will mention the number of each paragraph that I quote, so that honorable senators may amplify the information which I now give them should they desire to do so.

Paragraph 385 sets forth that -

Amongst the earliest examples given are the miners' societies. These societies provided for sickness, accidents, burials, and even granted pensions to. invalids, widows, and orphans. In the Han region these societies were numerous and flourishing, and amongst the mining ordinances which existed in Goslar from the year 1524 may be seen express provision for the granting of compensation for accidents and sickness. One of these ordinances quaintly provides that "he who breaks any member of the body so as seriously to interfere with his capacity for work shall receive from the common fund. an amount equal to eight weeks' wages, besides the free care of the physician."

To secure increase of both strength and unity in the working of these primitive societies, conferences were held, prior to 1600, between the representatives of the various bodies, and in this manner the regulations were simplified, and in certain cases the societies were united for their better working. It is interesting to note that no fundamental change in either rules or management occurred until during the last 50 years.

The independent initiative of the miners during all these years is most marked. To them alone belonged

the entire administration, and it is not surprising that there was more of humanity than scientific skill displayed in their proceedings. The commonly announced principle was, "We give to the sick, injured, or needy a compensation according to his necessities, and according to the funds in hand." It would seem that the proceedings were conducted with fairness and mutual satisfaction, due largely no doubt to the fact that in these small associations a personal knowledge assisted to equitable distribution.

The funds were provided by contributions from the miners, each paying a percentage of his wages and a small weekly allowance. Owners and managers had to do only with the external regulations. No legal rights to compensation by them were admitted, but various small concessions were made by them, which tended to augment the funds of the societies, and these concessions have been somewhat extended during the present century.

One of the later and most important of the developments of the mining societies has been the administration by committees, consisting half of employers and half of employees, and the division of the contributions between both. While the employer is made responsible for the entire

Sum requisite to discharge the obligations assumed, he is authorized to deduct the proportion due by the workmen from the wages payable to them.

That these long established and frequently amended systems or methods failed to meet the necessities of the workers, plainly shows the inefficiency of voluntary methods, and the absolute need of State intervention.

Quoting again from my report, paragraph 405, and one or two following : -

It is a common assumption that socialistic legislation is in German politics of comparatively modern growth, and chiefly attributable to Prince Bismarck. As a fact, the famous Chancellor did but extend and develop the social system originated by the great Elector and by Frederick the Great. Under the latter monarch, State socialism first assumed a definite form in Prussian legislation.

The law in Prussia a century ago plainly laid down that : - " It is the duty of the State to provide for the sustenance of those of its citizens who cannot procure subsistence for themselves. "Work, adapted to their strength and capacities, shall be supplied to those who lack means and opportunity of earning a livelihood for themselves, and those dependent upon them. " Those who from laziness, love of idleness, or other irregular proclivities, do not choose to employ the means afforded them of earning a livelihood, shall be kept to useful work by compulsion and punishment under proper control. "The State is entitled, and is bound to take such measures as will prevent the destitution of its citizens and check excessive extravagance. "The police authority of every place must provide for all poor and destitute persons, whose subsistence cannot be insured in any other way."

Senator Pearce

- That does not comply with the "Vagrant Act.

<page>2465</page>

Senator Lt Col NEILD

.- I think this is a very complete Vagrant Act in itself as regard those who were capable of work and did not choose to support themselves. I have made this remark - .

Actuated throughout his career by the views which he has enunciated in his earliest utterances, viz., that the State exists for the benefit of all, the social duties are obligatory upon the citizens, and that the State, in its Executive functions, existed to insure that these duties should be scrupulously fulfilled. Prince Bismarck founded his economic legislation upon the existing industrial distress and the unhappy condition of the working classes.

Now let us see what has been the developmental procedure on the Continent as regards State insurance against industrial accident. It is more convenient to submit the information by alphabetical order of country than to submit it in chronological order. The Bills have been introduced, withdrawn, amended, defeated, and reintroduced in such a way as to make it almost hopeless to give the information in anything like chronological order. I therefore proceed with the alphabetical order of countries. Beginning with Austria, we find there a compulsory system of State insurance against industrial accidents. The law was passed in 1857, and in 1894 a further law was passed extending the operations to include forest and agricultural workers. As I have said, this compulsory law follows the German system, of which I shall speak more at length later on, and funds for meeting the claims are provided - 90 per cent, by the employers and 10 per cent, by the employees. In Belgium there has been less accomplished ; but as far back as 1886 a

commission on labour reported in favour of compulsory insurance, and a Bill was subsequently introduced. I believe a compulsory law of State accident insurance is in existence in Belgium at the present time, but my latest advices are not sufficiently explicit to warrant me in stating absolutely that it is in force. In Denmark, however, we find that there is a compulsory law, which was introduced in the Rigsdag, the Legislative Lower Chamber, in 1885, and the funds for carrying out the objects of the law are provided practically by the employers in the form of a general income tax. I say "practically by the employers," because, though other persons than employers will have to contribute to a general income tax, it necessarily follows that a larger part comes out of the pockets of employers. The general Government makes good any deficiency that may arise in connexion with the fund. When we come to a little place like the Grand Duchy of Finland - and I suppose the average man regards Finland as a place occupied by a few Laplanders and a few fishermen and miners - we find that in 1894, six or seven years ago, the Legislature there, known by the pleasant name of Landdag, passed a compulsory law, and threw the whole cost of the insurance of the workers upon the employers. The history of State accident insurance in France is much more lengthy. Between 1879 and 1887 no less than fifteen schemes for State industrial accident insurance were submitted to the Chambers. In the latter year a committee of the Chamber of Deputies presented a report on these schemes, and a Bill was introduced and passed by 351 votes to 78. The entire cost of working the scheme was by this Bill thrown on the employers, but owing to amendments made by the Senate the Bill did not become law. Here let me remark that it is rather strange that in France the earliest effort was blocked by amendments made by the Senate, while in Germany the earliest effort was blocked by amendments made by the Lower Chamber. If honorable members compare these two events, they will see plainly that there was no settled objection on the part of either one Chamber or the other by any kind of mutual understanding, but that the differences were those which may honestly arise on any public question. In 1890 or 1891, four new schemes were submitted, and in 1893 a comprehensive measure of compulsory State insurance was passed by the Chamber of Deputies and rejected by the Senate. After a lapse of five years or thereabouts - in 1898 - a compulsory law was passed, and the whole cost thrown on the employers, and that Act of the French Government is to be found translated in the schedule at the end of my report. By the courtesy of the French Consul-General I was enabled to obtain a copy immediately after the promulgation of the law, and to have it translated and placed as what is perhaps an addendum to my report. So far as I know, this is the first and only available translation of the law in the English language. When we turn to Germany, we find there the greatest example of what any State has attempted in connexion with this great socio-political question. The first Accident Insurance Bill of Germany was introduced in January, 1891, and applied to mines, factories, and buildings. By that Bill it was proposed that the premiums or subscriptions to provide the necessary funds should be payable, two-thirds by the employers, and one-third by the employees, while the premiums of workers whose wages did not exceed £37 10s. per annum were to be paid by the State. This Bill was passed by the Federal Council, but the Reichstag or Lower Chamber disapproved of the third proposition for the payment by the State of the premiums on behalf of workers earning only £37 10s. per annum. What happened was what might be expected to happen in a self-governing country. The Bundesrat refused to sanction the Reichstag's amendment, and a general election followed. On the 17th November, 1891, there was presented to the Reichstag the celebrated message of the Emperor, communicated by the Imperial Chancellor, Prince Bismarck. Perhaps I may be permitted to occupy the time of the Senate sufficiently long to read an extract from this historic message, which had so large an influence on the industrial world of Europe. In that message we read : -

We consider it our Imperial duty to impress on the Reichstag the necessity of furthering the welfare of the working people. We should review with increased satisfaction the manifold successes with which the Lord has blessed our reign, could we carry with us to the grave the consciousness of having given our country an additional and lasting assurance of internal peace, and the conviction that we have rendered the needy assistance to which they are justly entitled. Our efforts in this direction are certain of the approval of all the federate Governments, and We confidently rely on the support of the Reichstag, without distinction of parties. In order to realize these views, a Bill for the Insurance of Workmen against industrial accident will first of all be laid before you, after which a supplementary measure will be submitted, providing for a general organization of industrial sick relief insurance. But, likewise, those who

are disabled in consequence of old age or invalidity possess a well-founded claim to a more ample relief on the part of the State than they have hitherto enjoyed. To devise the fittest ways and means for making such provision, however difficult, is one of the highest obligations of every community, based on the moral foundations of Christianity. A more intimate connexion with the actual capabilities of the people, and a mode of turning these to account in corporate associations, under the patronage and with the aid of the State, will, we trust, develop a scheme, to solve which the State alone would prove unequal.

By some process that does not appear very clear to outsiders, the Accident Bill that was promised as the first measure, gave place for a time to a Bill to establish insurance against sickness. This latter Bill was passed into law on the 31st May, 1883. In the following year the second Accident Bill was submitted, and, according to this measure, employers were to pay the-fourths of the premiums or contributions, whilst the Empire was to pay the other fourth. But the measure was amended in the Chamber, and- when finally passed into law it was provided that the employers were to pay the whole sum. A summary of this important measure, which was the first passed into law in the world for the protection of persons employed in industrial pursuits especially, is to be found at paragraph 428 of my report. From this summary I will read a few of the more important provisions.

Compulsory assurances against accidents arising in their trade or ' calling, at the cost of their employers, for all workmen and officials whose earnings do not exceed £100 per annum, in all industries under the provisions of the Employers Liability Act, and where operations are conducted by hand with the aid of machinery, and also in some branches of the building trade. There are regulations permitting the extension of the law to certain other specified persons. Contracting out of the Act is not permitted, and the renunciation of the claims of an insured person is stringently prohibited. The insurance is maintained under the guarantee of the Imperial (Federal) Government, and on the mutual system by trade associations, consisting of employers - united according to the different branches of industry - locally or throughout the Empire. These associations possess a legal status and full powers of self administration, subject, however, to the Imperial Insurance department. Compensation includes cost of cure, a fixed allowance after thirteen weeks from the date of accident while disabled, and in fatal cases, burial money, namely, twenty times the daily wages of the deceased, the minimum total £1 10s., and an allowance to the deceased's family as follows : - To the widow during widowhood or until death, one-fifth of the husband's earnings, and for every child fifteen one-hundredths of the earnings until the attainment of the age of fifteen ; but so that the combined annuities to any family shall not exceed three-fifths of the earnings of the deceased. During the first thirteen weeks after the occurrence of the accident, the person injured receives aid from the Sick Insurance funds, or the Trades Associations may, by agreement with the latter, undertake the charge of the injured during the said thirteen .weeks, and receive a refund of the expense from the Sick Insurance fund. A person totally disabled receives as compensation an allowance equal to two-thirds of his average yearly wage. If partially disabled, a proportionate allowance is paid ; or free hospital treatment, and an allowance for the family.

Senator Glassey

- Is that for life ?

<page>2467</page>

Senator Lt Col NEILD

- Yes. If honorable senators will turn up the report, they will find a table setting forth the exact percentage of wages payable in respect of the loss of a finger, thumb, eye, limb, and so forth. There is a table, so that a worker knows precisely the proportion of his wages which he will be able to permanently draw as an annuity should he unhappily meet with accident. Omitting some matters of machinery, I will just make one or two other extracts from. this summary--

To cover the advances named, the expense of management, and the fixed amounts for the reserve fund, the members of the association are assessed in such a way that only the actual expenditure of the past year, and not the capitalized value of the annuities, is raised.

In Austria I think it is the capitalized value of the annuities that is raised by the contributions, but in Germany it is the actual yearly expenditure on payments and something to the permanent fund that is raised.

Every employer contributes, therefore, in proportion to the risks to which he exposes his association.

These risks for each separate establishment are determined by a distribution of the various occupations

over the several classes of a danger-tariff, drawn up by the association, and in proportion to the amount of wages and salaries paid out. The law- confers on the association the important prerogative of prescribing regulations for the prevention of accidents. Through these regulations the employers can be compelled, under penalty of higher assessments, to adopt the necessary measures for safety, and also workmen may be forced by fines to follow these rules.

There is a note which shows that 64 trade associations at the date of the report had already adopted these regulations, and appointed no less than 189 superintending engineers. Of course, the greater the protection, the smaller the risk, not only to the limbs and lives of the workers but to the pockets of the employer, so that both parties are benefited.

The insured workmen are not members of the trade associations. They have, however, to bear a proportion of the aggregated liabilities caused by accident, as they, together with the employers, contribute to the sick relief clubs to which the care of patients is left during the first .13 weeks of the disability arising from an accident. But the statistical calculations show that the contributions of the workmen to the accident insurance are in an inverse ratio to the contributions of the employers to the sick relief insurance; while the workmen on their part bear only 11 per cent, of the entire burden for accidents, the employers have to contribute three times as much (33½ per cent.) to the sick relief insurance. From these reciprocal relations it follows that there should be mutual participation in administration.

Accordingly, the law permits representatives of the working men to take part in the investigation of accident cases, and in the discussion of preventive regulations, as well as in the proceedings of the Arbitration Courts and of the Imperial Insurance department. On all these occasions the workmen enjoy the same rights as the representatives of the employers.

Going on to what is of interest to honorable senators, it will be seen that -

Employers or officials convicted of having caused an accident either by intention or by negligence, are required to make up to the injured person (or to the survivors) the excess of the awarded indemnity (if any) above the amounts provided under the accident insurance law ; but to the Trade Associations or the sick relief club, which are in the first place bound to make the payment, they are held responsible to the full amount. Third parties remain liable for the whole extent of the damage, and have to refund the compensation, already paid, to the associations.

This law was materially extended on 28th May, 1895. I mean that sickness insurance was extended on that date so as to embrace persons employed in the inland carrying trades both by land and water - by rivers, canals, and so on - in the post and telegraph services, the railways, and the administrative departments of the army and navy.

Senator Dobson

- Does it not include sailors and agriculturists ?

Senator Lt Col NEILD

- I shall come to that directly. There were a number of laws passed.

This extension to persons employed in the post and telegraph services, the railways and administrative departments of the army and navy is specially noteworthy inasmuch as it places the insurance so far as persons employed in Governmental institutions were concerned directly in the hands of the Empire or respective federal State without the intervention of trade associations.

I am reading now from paragraphs 499 to 431 of my report.

A further extension of the law took place, viz., on 15th March, 1886, by which provision was made for the insurance against actions of State officials and officers and men of the military forces.

This Act, however, has more the character of pension than accident insurance legislation, since by it compensation for injuries is accorded in the form of a State pension, to all officials of the Empire. Several of the federal States have adopted similar legislation. The principal Acts of 1883 and 1884 did not include agricultural and forestry labourers in the scope of their operations, but on the 5th May, 1884, an extending Act made provision for their insurance against accident, and adopted certain regulations respecting their insurance against sickness. As regards accidents, insurance was, with some modifications, rendered necessary by reason of the special conditions of agriculture, made compulsory. In Germany small agriculturists frequently employ the members of their own families without wage contracts, and they (the small farmers) not infrequently become employes for limited periods. Another condition for which provision had to be made was payment in kind, which were and are still common in

many parts of the Empire. Again, employers are often under the obligation of contract or custom to provide for agricultural labourers in the event of illness or accident.

In 1857 the law was further extended to cover the building trades, and in the same year also the law was made to embrace persons engaged, in maritime occupations. The text of that law, or every part of it that is in the slightest degree applicable to Australia, is to be found in the pages of my report, and if the volume should appear to be rather a heavy one, let me say here, what I have perhaps never said before in public, that I prepared the report for the general public, for the publicist, and also for the convenience of the parliamentary draftsman, when he got to work to prepare the laws that I hoped would follow the exposition of 'the facts. In this report are to be found the texts of all the Acts likely to be of value to Australia.

<page>2468</page>

Senator DOBSON

- The report does the honorable senator credit.

Senator Lt Col NEILD

- So that there can be no difficulty for the parliamentary draftsman, and no necessity for him to go outside the limits of this report to find every fraction of information available in Europe for the purpose of preparing a measure for this end of the world. Then in 1896 it was officially announced by the Imperial Insurance department that the law extending insurance would be shortly completed by its extension to the handicrafts and small trades, and to home industry and commerce, with about 1,000,000 establishments and 2,000,000 of employees, so that all workmen on wages, and other classes of similar standing, with not more than 2,000 marks, or about £100 a year income - such as agricultural and industrial managers, commercial clerks, and small employees - would reap the benefit of the Accident Insurance laws. Before I leave Germany I feel sure that it will be of interest if I give some details of the figures for the last year, which I was able to obtain from the German State statistics. The statistics were, of course, given in German money, but for easy perusal and understanding by English readers these were altered into English money. These figures can be found on page 312 of the report, and I will only deal with those relating to accident insurance. In the year 1894 - that is, the tenth year of the operation of the initial law, but only a very few years, after some of the more recent extensions of the law had come into operation - the number of persons insured against accident, in Germany alone, was no less than 18,492,000. This number includes wage earners of all classes, and about 4,000,000 of small farmers, and many persons who were insured under two different laws - finding employment under two methods of occupation, and, therefore, doubly insured. The persons relieved numbered 332,800. The total receipts, including the balance from the previous year, and fines and interest, were for the year £4,109,385. The employers' contribution to this sum amounted to no less than £3,204,150. It might be of interest, perhaps, for me to incidentally mention that the total payments by German employers in 1894 under the sickness, accident, and old-age and invalidity laws amounted to no less a sum than £7,500,000. That was the aggregate contribution of the employers of Germany under the State insurance laws. They paid £1,873,500 in respect to the sickness insurance laws, £3,204,150 in respect to the accident laws, and £2,500,000 under the invalidity and old age pension laws.

Senator McGregor

- It is a wonder they did not go insolvent.

Senator Lt Col NEILD

- I think that as I have given the contributions of the employers I should also give the contributions of the employed. Under the sickness insurance laws the employed paid £4,267,150, under the accident laws nothing, and under the old-age pensions and invalidity laws the same as the employers - £2,500,000. So that actually the employers paid altogether in round figures just about £1,000,000 more than the workmen. These figures, of course, relate to the whole system, but my speech is directed, practically, exclusively to the accident insurance question. I will leave the expenditure out, because as it is given it shows the year's addition to the fund, and that is not of much consequence to us. It is better that we should take notice of the cost of relief and administration. The cost of relief under the accident laws amounted to £2,214,085, and the cost of administration to £472,000. The accumulated funds at the end of the year, in respect of accident insurance, amounted to £6,506,500. The relief given per individual case averaged £6 13s., and the cost of administration per person insured seemed to me to be extravagantly

large, being no less than 3s. Old It is in this connexion that I entirely disagree with the system in vogue in Germany, of working the insurance through the employers' associations, whose methods appeared to be vastly extravagant - particularly on the part of the chimney sweeps, whose association was the most expensive of the lot. I strongly believe, as the result of the information I have obtained, and the knowledge I have gathered, in the transaction of such business as this directly with the State, as being by far the more economical proceeding. We thus have one management instead of thousands.

Senator Glassey

- And it is far the most perfect arrangement.

Senator Lt Col NEILD

-Col. NEILD. - And far the most perfect and the most satisfactory all round. I propose to say a word or two about that before I sit down. I should like if I had the day before me-

<page>2469</page>

Senator Glassey

- There is plenty of time ; do not hurry.

Senator McGregor

- We are- all interested.

Senator Lt Col NEILD

- I have not anything like done.

Senator McGregor

- Stick to it.

Senator Glassey

- It is intensely interesting.

Senator Lt Col NEILD

-'Having some regard for the lapse of time and the convenience and patience of honorable senators, I feel that I must omit much that would be of value. May I say that I am hopeful that what I am saying may be read in the pages of Hansard, and may whet the appetites of the readers to investigate a subject to which they have hitherto perhaps given no attention? Although, perhaps, labouring the matter to some extent, or loading it with details, I feel that I am doing a public duty, and I am grateful to honorable senators for their very courteous- observations, which are an encouragement to me to finish a task which is congenial ; but at the same time, I fear, it is rather a heavy burden to listen to it.

Senator Glassey

- Not at all.

<page>2470</page>

Senator Lt Col NEILD

.- Turning to the little kingdom Of Greece, we find that even there our friend's, with their white frilled petticoats, are not above the obligation of providing for their industrial workers. So far back as 1861 a mining law was passed; providing that one hundredth part of a drachma, or eightpence three farthings in English money, should be levied on- the net proceeds of all mines, to create a fund against accidents. I Wonder what would be the happy condition of the gold miners of Victoria, the coal miners of New South Wales, and the silver miners of its Broken Hill district - indeed, one might say of the whole workers of Australia - if a similar charge had been levied on the enormous product of the mines of those States. The fund would have been of the greatest value in relieving distress, and bringing a ray of sunshine into homes made mournful and the residents broken hearted by reason of the unhappy accidents which so frequently and so inevitably occur. But Greece did not stop at its little legislation in T861. In 1S84 it did something- which Australia ought to have done, and which I hope to live to see done. By a Royal decree passed in that year, 1 per cent, on the value of all public contracts was ordered to be paid into a fund to compensate injured workmen. If we had made a levy of 1 per cent, on the contracts of Australia since the introduction of responsible government we may readily imagine that by this time the fund, even after being drawn upon for the benefit of the injured, could not amount to less than some millions of money. I made a rough calculation with reference to New South Wales, and came to the conclusion that 1 pel1 cent, on all contracts since the introduction of responsible government in that State would have totalled certainly a million and a half of money. And something may be said for the proposition even if the 1 per cent, had been added to the cost of the buildings and had actually been borrowed,, because it would

have created a fund existing for all time, and might have been a very fair charge against the investments - railways and .so forth - in the "construction of which accidents have occurred which now necessitate a constant drain on the community in some form or another for the maintenance of the injured and the support of . the survivors. Italy is a happy hunting ground for the student of socio-political legislation in connexion with workmen. The earliest effort at such legislation in Italy was- made by the old kingdom of Sardinia, at about the time of the Crimean war ; the date is to be found in the report, but I shall not take lip time in turning it up. But, in 1883, after a good many efforts of a varied character had been made, the Legislature established a national accident fund, or the *Cassa Nazionale*. From 1884 to 1888, numerous Royal decrees providing for regulations- altering the conditions of this fund and fixing matters up generally were promulgated ; and as they are all to be found referred to in my report, I shall not take up more time in speaking of them. But if there is an object lesson as to the hopelessness of voluntary efforts in providing for these matters, Italy furnishes it to us. Not only were committees of workers formed to procure - if I may use a legal term - the insurance of workmen under this fund, but committees were formed consisting of people of all ranks, from the worker to the peer. The professional man, the benevolent man, the professor or student of art, the merchant - every class of worker, and thinker, and liver joined in these committees to procure the insurance of the workmen, and they failed. The miserable failure, the beggarly fiasco of the effort, is recorded in my report. The figures are disheartening to the man who thinks and believes that voluntary effort will accomplish the protection of those who require protecting against themselves. I admit that Italy presents very unhappy features. It is a country - certainly one of the poorest, if not the poorest, of Europe - which has been stripped for military and naval purposes of funds, which, if devoted to industrial pursuits, would have placed it in a very different position. But another reason why the voluntary systems adopted to to meet the case there failed was the largely increasing evidence from all parts of Europe that compulsion was not only a necessity, but was coming, and coming rapidly. In 1892 a compulsory Bill was introduced into the Chamber of Deputies by Minister Lacava. It provided -

For the compulsory insurance against accidents, occurring while at work, of persons employed by the Government, provincial and communal authorities, mine and quarry owners, building, contractors, in ship-yards, on railways and tramways, in factories (where ten employes and over are engaged), in the construction of bridges, canals, roads, and similar undertakings.

I am quoting. from paragraph 555 of my report -

The Bill stipulated for various penalties recoverable against employers who failed to adopt the measures prescribed by regulations in force for the prevention of accidents and the protection of the health and lives of workpeople.

In the event of complete inability to work, or of death, in either case occasioned by accident while at work, a sum of money, representing four or five years' wages, with a minimum of 1,500 lire (£60)-

A lire is, taken roughly, worth a franc, which may be regarded as of the value of 9d.-

Was to be paid' to the injured person or his representatives.

The Bill failed to pass in 1892, but it was re-introduced in 1895, and is now, I understand, the law of Italy. In the Netherlands we find, as disclosed in my report, a very excellent system of voluntary effort as between employer and employed, but it has failed, as similar systems have failed everywhere on the Continent; and I venture to think will fail wherever they are attempted. Because there are so many pressing claims upon the workman's wages, so many absolute necessities to be met, that provision against unknown casualties are less likely to claim attention and to meet with prompt recognition than the more pressing and immediate claims in respect of clothing and the meal table of the worker. It is of no use to say that a man should make this provision. We should all insure our' lives. Some of us do, and some of us ought to insure for more than we do. Whether we insure for little or much, it is quite certain that the vast majority ought to make larger provision than is made. But the fact remains that the pressing necessities of life, the education of the child, the care of the sick, the payment of the doctor, the cost of medicines, the procuring of food, and the other requisites of the home, are demands of so immediate a character that provision for the unknown, and the liabilities that can be postponed or overlooked, are under the rules of life - under the very conditions of human existence - too often postponed for a more convenient season. It is on this account that compulsory assurance at the hands of the State, which is the

least expensive method of management for such a scheme as this, had better be undertaken by the State, and should, in my humble opinion, be regarded as a State duty. The Netherlands have given us at least evidence of careful investigation, and a most admirable proposition has now become the law of the land. In my opinion, the Dutch system of industrial insurance is, perhaps, the best and the most complete on the continent of Europe. It is certainly the most enlightened, and is supported by arguments to which I will allude later on. To show the deliberation with which our Dutch friends proceed' - and they are rather deliberate sometimes - I may remark that in 1887 a Parliamentary commission advocated State insurance. Three years later a State commission was appointed by Act of Parliament to- investigate the subject. Two years later a State commission was appointed by RoYal warrant, and it reported in 1894. This commission recommended compulsory accident insurance with the State at the cost of employers. Then further inquiries were made in respect of the scheme. Five years, in fact, elapsed ; and in 1897 a Bill was introduced. I have fortunately been able to obtain a copy of the Dutch Gazette, containing the whole text of the measure. Translations of portions of it are to be found in my report - quite sufficient for any ordinary purpose. If I have not printed the whole of it, I have the rest of the translation in my hands, and it can be made use of by honorable senators. The Dutch Bill, as I have said, was introduced in 1897. It was made a compulsory measure. The whole cost, as in the German and other systems, was thrown on the employers, and the business is transacted through what may be described roughly as a State insurance department, or association, or fund, or bureau - call it what you please. Therefore, there is no element of waste in the administration, as there is under the German method of multitudinous associations or societies. You have no such expenses under the Dutch system as you have by compelling insurance with offices conducted to make dividends for shareholders ; but you have the greatest possible security that, in the event of claims arising, they will be promptly and efficiently met. Norway shows us that a compulsory law, at the employers' cost, per an insurance bank on the Dutch system, has been inaugurated ; and in Sweden the same is the case. Russia is a country to which Englishmen would hardly look for an example of State insurance. But, at least, Russia does provide us with some excellent examples of payments for the employes of the mines, and this at the cost of the workers to the extent of one-half and of the mine-owners to the extent of the other half. As the mines in Russia are largely State institutions, it necessarily follows that the State itself conducts this business. It has been so ever since the year 1861. For 40 years Russia has, through its ownership of the mines, been contributing one-half the cost of the insurance of those in its employ. In 1861 the Czar sanctioned regulations for the establishment of a miners' fund.

Senator Glassey

- The same year as the serfs -were liberated.

Senator Lt Col NEILD

.- I think it was the same year. This fund is supported by deductions from the earnings of the miners and the owners, and by fines, donations, and bequests. It makes temporary allowances for slight injuries. But the real point with reference to Russia is that workmen permanently injured, and their widows in case of death, receive payment. The orphans likewise are pensioned by the proprietors of the mines. So that we find in Russia that for so many years back as I have indicated the injured workmen, the widows of the killed, and the orphans have been provided for at the expense of the mine-owners. This serves a very useful purpose. It is the same thing as employers paying money annually by way of insurance premiums, with this unhappy difference, perhaps, for the mine-owners - that in one case the liability is widely spread and known and recognised, while the payment is small, whereas in Russia, for example, the cost of these accidents falls, and must fall, upon the individual mines in which they occur. Switzerland is an object-lesson for Australia, especially as we find there a Constitution to which our own bears, perhaps, the closest resemblance. The various cantons have made numerous efforts to deal with this question. There has been for many years a profusion of voluntary associations in Switzerland, and we also find that the various cantonal Governments have made efforts so numerous with the same object in view that I would not take up the time of the Senate by describing them. All these efforts failed, and it became obligatory on the Federal Government to take up the matter. So pressing was the thing, so chronic was the hopelessness of voluntary effort in that country, that federated Switzerland had to alter its Constitution in order to legislate upon this most important question. Surely the fact that a people as frugal and industrious as the Swiss have found it necessary to take this great action should be an object-lesson not

beneath the notice of the Senate, and all placed in authority throughout' the length and breadth of the land. At paragraphs 708 and 709 of my report the matter is referred to. The article of the Constitution as finally adopted by the Federal Chambers was made to read thus - "The Confederation is competent to introduce, by way of legislation, insurance against sickness and accidents, taking into account the Mutual Aid Societies already existing. It may declare participation in these insurances obligatory in general, or for certain determined categories of citizens."

On the 26th October, 1890, the proposed partial revision of the Federal Constitution embodying the principle of compulsory insurance was submitted to the referendum, and received the sanction of a very large majority of the people, the voting being, for 232,105, against 74,762.

Senator DOBSON

- Does the Swiss scheme include pensions ?

Senator Lt Col NEILD

- I think it is clearly set out in my report that old-age pensions are possible under the Constitution, but that an amendment was required to bring in power to legislate in regard to casualty insurance.

<page>2472</page>

Senator DOBSON

- The amendment which the honorable senator read does not cover it.

Senator Lt Col NEILD

- No. But at paragraph 712 of my report this will be found -

With the Constitution amended to permit of legislation imposing State insurance in respect of accidents and sickness, it is but a question of time, ere these important issues are determined, but the larger and more complex question of old-age provision cannot be dealt with, unless the Constitution is again revised. The difficulty existing plainly shows the disadvantage of a rigid Constitution, as against the elastic systems of government obtaining in other countries, and points a moral, deserving attention, in connexion with the proposed establishment of an iron-bound Federal Constitution for Australia.

Senator Dobson

- I thought that following the German example they would have made provision for it.

<page>2473</page>

Senator Lt Col NEILD

- In 1890, when the revision took place, that does not appear to have been done. Six years elapsed after the amendment of the Constitution, and then a Bill was introduced largely following the German law, casting the whole cost upon employers, and conducting the business through an insurance bank or institution after the style of the Netherlands and Norway. The facts which I have quoted demonstrate clearly and emphatically that all civilized Europe is advancing rapidly towards State insurance in respect of industrial accidents, and that in a majority of the nations that result has already been achieved. And here it is interesting to note how great an influence in this matter has been exerted, not by socialists or even workers, but by one of the most irresponsible despots named in history. It is in the celebrated Code Napoleon that we find the modern origin of State insurance in regard to industrial accidents. We find one of the sources of its origin in the civil code and two in the penal code of France - the work of the great tyrant and the great butcher of humanity - showing that if he wrought evil in one direction he had at least some redeeming point in regard to the matters involved in the motion which I have put before the Senate. Article 1382 is translated as follows : -

Every action of man whatsoever which occasions injury to another binds him through whose fault it happened to reparation therefor.

Then article 1383 sets forth - «

Every one is responsible for damage of which he is the cause, not only by his own act, but also by his negligence or by his imprudence.

[157]

Article 1384 provides -

A person is responsible, not only for the injury caused by his own act, but also for that which is caused by the act of persons for whom he is bound to answer, or by things which he has had under his care. The father, and the mother after the decease of the husband, is responsible for the injury caused by their children, being minors and residing with them ; masters and trustees for the injuries caused by their

servants and managers in the functions in which they have employed them ; guardians and artisans for the injury caused by their wards and apprentices, during the period in which they are under their superintendence. The responsibility above mentioned is incurred unless the father and mother, guardians and partisans, can prove that they were not able to prevent the act which gives rise to such responsibility. Then, in article 1385, we find the following statement : -

The owner of an animal, or he who makes use of it while it is in his employment, is responsible for the injury which the animal has occasioned, whether the animal were in his custody or whether it had stayed or escaped.

Article 1386 provides -

The proprietor of a building is responsible for the injury caused by its fall when it has happened in consequence of necessary repairs or from defect in its construction.

Turning to the penal code, there are two or three articles which are certainly worthy of quotation -

Article 319. Whoever, by unskilfulness, imprudence, inattention, negligence, or non observance of regulations shall have involuntarily committed manslaughter, or shall have been involuntarily the cause thereof, shall be punished by imprisonment of from three months to two years, and a fine of from 150 francs to 000 francs.

Article 320. If there have not resulted from Such want of skill or precaution other than wounds or contusions, the guilty person shall be punished by from six days to three months' imprisonment, and a fine of from 16 francs to 100 francs, or by one only of such penalties.

The examples under French law of what may befall an employer are certainly worthy of study, and I may quote one here : - A visitor to Paris had employed a cab-driver, who overcharged him, and he complained to the authorities. The authorities directed restitution of the overcharge. The defaulting cabman called upon his passenger, tendered him the return of the excessive charge, and at the same moment shot him dead. The widow then brought a suit against the proprietor of the cab for whom the murderer had been driving - with the final result that the cabman was condemned to death, and the employer was condemned to pay 20,000 francs to the widow of the victim. That is a very well-known case.

Senator Dobson

- It is utterly contrary to English justice, and law, too.

Senator Lt Col NEILD

- I am aware of that. I am only trying to show the origin of the present movement ; and I will come to that almost immediately.

Senator Dobson

- I suppose that must have been under statute law 1

Senator Drake

- Under the Code Napoleon ?

Senator Lt Col NEILD

- Under the Code Napoleon. In making this reference to the cab case I may say that it is to be found in a report furnished to the Foreign office by the legal adviser to the British Embassy. I am not responsible for the case, and it is not a cock-and-bull story cut from a newspaper, but a case quoted from a document of high official value. The whole matter may be found referred to on pages 180 to 182 of the report.

An Honorable Senator. - Where can we get the report ?

Senator Lt Col NEILD

- I imagine it can be got in the Library.

Senator Pearce

- We are getting it now.

Senator Lt Col NEILD

- Honorable senators are getting a few little pieces out of 600 pages. I want to say now that the logical outcome of these articles of the Code Napoleon was the enactment of employers' liability laws. That is why I have introduced the matter. I have traced the question of insurance from the earliest associations of the miners, 300 and 400 years ago, and have shown that the present legislation is due to the fact that it was found necessary that there should be something more than that. Napoleon seems to have been the first man to take action upon this, subject.

Senator Harney

- It was an English case that suggested the Employers' Liability Act of 1880, Priestley versus Fowler. Senator Lt.-Col. NEILD.- That may be as regards England, but the employers' liability laws of the continent unquestionably have their origin in the Code Napoleon. It may perhaps seem presumptuous of me to discuss matters of this kind with a gentleman so learned in the law as Senator Harney ; but if the honorable and learned senator will compare the civil code of Holland, for instance, with the Code Napoleon, he will see the close connexion, and that one is really a transcript of the other. He will also find that in Belgium the Code Napoleon is the law there, and that unquestionably the influence of the Code Napoleon compelled, brought about, or initiated the establishment of the employers' liability laws on the Continent. As regards the initiation of the movement in England, I do not, of course, pretend to debate the honorable and learned senator's proposition. No doubt Senator Harney is perfectly accurate, but the fact remains that England has not got further on the way than the Employers' Liability Act, though there has been some little tinkering with the question.

Senator Dobson

- They passed the Workmen's Compensation Act in 1897.

<page>2474</page>

Senator Lt Col NEILD

- That is referred to in the report. I am aware of that, but it is only tinkering with the matter. It is like attempting to stop the rush of water into a ship's hold with a few blankets, as was done, unfortunately with such paltry effect, in the case of the London, 40 years ago, when an attempt was made to stop the rush of the Bay of Biscay through the broken engine hatch of the vessel with a few mattresses and blankets. That is about the condition of the law to which the honorable and learned Senator Dobson refers. If I may be permitted, I will read a few brief paragraphs from my report as being better than attempting to convey what I wish to say at greater length viva voce. Commencing with paragraph 591 there will be found these sentences : -

At various places in this report, I have freely acknowledged the unsuitability of compulsory old age insurance for Anglo-Saxon communities, but serious arguments can be advanced in favour of the application of this principle in regard to accident insurance of work-people by their employers, inasmuch as by the various Employers' Liabilities Acts in all parts of the British Empire, employers have been compulsorily constituted the insurers of their employees, to the extent, at least, of being liable to make good injuries arising from accidents which it was in their power to avert.

The burden of this responsibility is enlarged to the employer, while the measure of its protection for the worker is correspondingly reduced, by reason of the legal proceedings which these notoriously unsatisfactory laws encourage - litigation costly alike to the parties concerned and to the country ; injurious to the good relations which should exist between employer and employed, without which the industrial progress of a country cannot be satisfactory - litigation which practically destroys the beneficent ideal of Employers' Liability laws.

Viewed from this stand-point, it may well be considered whether the existing liability under these laws,, plus the legal costs of contested claims, do not reach a total charge upon employers equal to the contributions necessary to maintain a fairly complete and much more highly beneficial system of State insurance against accidents, the advantages of which, to the workers, would be incomparably greater than the uncertain and unsatisfactory relief granted them under existing legislation.

The question of State intervention resolves itself into one of State responsibility. In every civilized community the charge of the helpless - old, middle-aged, and young - is regarded as a proper function of Government, and the higher the type of civilization developed, the greater the interest evidenced in the benevolence extended to those in need of help. This being acknowledged, there seems no valid reason why the State should not intervene, in certain cases, to prevent the occurrence of the distress it is willing to relieve.

I have quoted examples, now let me also quote arguments ; and perhaps it will be a relief to the Senate if I say I am drawing to a conclusion. I propose to quote from the report of the Dutch Royal Commission, and I am sorry it is not possible for me to read the whole of the report, or at least the whole of the portion embodied in my report. I propose to make a few extracts from paragraph 600 and some subsequent paragraphs in the report. It is there stated : -

COO. If now it is taken for granted, that provision ought to be made by the law to have workpeople

insured against accidents met with 'in the performance of their work, then the question remains, whether it is sufficient to impose the obligation to insure, or whether the State must take the whole arrangement of the insurance into its own hands. For the reply to this question it is necessary to keep in mind the requirements, which an insurance, as here treated of, must fulfil.

. The greatest possible security, that the assured amounts shall always be paid as soon as they become due ;

The assurance must be as cheap as possible ;

The assurance must operate in such a way, that it acts as a spur to employers to endeavour to take the maximum of precautions against the occurrence of accidents. 601. No. .1. - It can be justly demanded from the State to provide this insurance. If the State were to allow the employer entire freedom to effect the insurance as seems to him best, then the security is lacking. If free, to do so, many employers would probably effect the insurance with those companies which charge the lowest rates, but in regard to which, for that very reason, doubts would be justified as to whether these are responsible companies. Many other employers would effect the insurance with companies, which have higher tariffs, and where, therefore, greater security is to be expected. Thus there would arise in the course of time a factor of inequality in connexion with the competition between employers, which should be obviated. 602.

Moreover, the rates alone do not determine the respectability of insurance companies'. A great factor is also, as regards solvency, the investment of the income, from which later on the payments must take place. How Call the State now, by compulsory insurance, watch that the amounts insured shall always be forthcoming? 'By superintendence of all companies ? Surely not, for the foreign companies could not -come under such superin tendance ; control over their business methods beyond our frontiers is impossible, as is control over their investments. Then as to superintendence of the Dutch companies with imposition of obligation upon the employer to effect insurance with these only? Such a protection ou our own land may possibly lead to the fixing of these few companies' rates at a much higher rate than necessary, which would be neither to the interests of the employer nor to that of the workman. It would, besides, not be possible to exercise such supervision in a satisfactory degree without, at least, hindering the companies in their freedom of motion. With an insurance organized wholly by the State these possibilities disappear. 603. No. 2. - The insurance must be as cheap as possible. When the State imposes the obligation to insure it maybe equitably demanded, that, it shall take care to limit the burden imposed to what is really needful. Take, for instance, six companies, with whom, with an eye to respectability, insurance may be effected. Each one of the six has its own expenditure, which must be made good out of the premiums. If, on the other hand, there is a company which insures everybody, its expenditure should be considerably lower than that of the six companies together, so that the premiums of the single companies may be lower. There appear, moreover, among the expenditure of every private company very important items, such as the cost of obtaining new business, which, by a State insurance, would fall away entirely, as the State insures neither more nor less persons than the law prescribes. And, finally, a private company has, as a rule, the obtaining of profits as its end, whereby the- cheapness of the premium is not promoted. If, however, the S6ate undertakes this kind of insurance, the absence of such aim would favourably influence the amount of the premium. 604. No. 3. - The. insurance must operate in such a way that it acts as a spur to employers to take the maximum of precaution against the occurrence of accidents.

In foreign countries, experience has taught that private companies do not, in this respect, work always equally well, and this mainly through not being strict with the classification of trades" into risk classes.

Senator McGregor

- The honorable senator would interfere with private enterprise.

<page>2475</page>

Senator Lt Col NEILD

- We have already interfered with private enterprise; and where it is an advantage to the community that private enterprise should be interfered with, interfere with it.

Senator De Largie

- That is rank socialism.

Senator Lt Col NEILD

- I will also quote - and the quotation will be a very brief .one - from the message addressed in January,

1896, by the Swiss Federal Council to the Federal Assembly, accompanying the drafts of two federal bills for the inauguration of sickness and accident insurance. May I say, before I quote that message, that, as a man who has had many years' experience of insurance management, in all classes of insurance, I strongly believe in the principle enunciated here, namely, that of trade risk, or charging according to the actual risk of the classes of occupation, and not on any other basis. The message contains these words :-r -i

The partition of trades into risk classes must be done very strictly, so that a certain trade may not pay too much or too little, and within each risk-class each working concern must be estimated at a higher or lower percentage, according to the measures therein taken for the prevention of accidents. By a percentage estimate of the greatest possible strictness, the employer has thus an incentive to take as many precautionary measures against accidents as possible, for the lower the percentage allotted to certain works is, the less has to be paid for the insurance. If now in this classification and in this allotting of risk-percentages, the conscientiousness of private companies cannot be wholly depended upon, then the just-mentioned incentive for the employer is missing. Competition may likewise be the cause of companies officially maintaining their rates ; but in reality deviating therefrom by means of the risk-classification, and if State supervision has to step in here, the hampering and expensive effect thereof always remains an unmistakable impediment.

I will bring my remarks to a conclusion with a few sentences taken from "my own report.

Senator Dobson

- Before ^ the honorable senator does that, can he give us any idea of the cost to the employers of making this liberal provision 1

Senator Lt Col NEILD

.- I deal with that point. I cannot give an estimate in figures, but I can point out the conclusion I have come to. It is impossible to do more.

Senator Dobson

- Taking every £100 of wages, what percentage on the wages is about the average ? About 20s. on every £100 1

Senator Sir Frederick Sargood

- Nothing like that.

Senator Lt Col NEILD

.- Nothing like that.

Senator Dobson

- Some as low as 6s. and j some up to 12s. ? I

Senator Sir Frederick Sargood

- Some as low as half-a-crown.

<page>2476</page>

Senator Lt Col NEILD

- Yes, some as low as half-a-crown. I will quote for the sake of ' brevity, in preference to speaking, from paragraph 607 and two or three paragraphs following : -

The able arguments of the Dutch Royal Commission's report, and those used in the message of the Swiss Federal Council, inevitably lead to the conclusion that the State- cannot be satisfied with merely imposing upon employers the obli- . gation to insure their workpeople, but must of necessity' assume the duty of undertaking the entire management of the important work, and, undertaking this large responsibility, it must also guarantee the payment of the indemnity. Immediately the workers are insured by the State they will, as a necessary corollary, lose existing rights under the Employers' Liability Law. This amply proves the value of State insurance to employers, freeing them as it does, from all liability - except for criminal carelessness - for accidents of every kind, and instead thereof, placing them under a known annual charge, apportioned to the hazard of their enterprise, and the precautions taken by them to guard against accidents. Not only does it afford this large measure of relief to employers, but it frees them from the serious risk of speculative law suits, and absolutely limits to a previously ascertained amount the sum for which they are annually liable, and they are no longer, as at present, exposed to the risk of complete ruin by reason of specially serious accidents. To the employed, State insurance against accidents lifts the worker and his or her family out of the ditch of uncertainty on to the fair field of positive

security against the risks that now surround them. Instead of having to accept such recompense as an employer may tender, or hazard all the casualties of protracted litigation, the worker enjoys the assurance of the State that in the event of accident he will certainly receive a substantial allowance throughout the period of his inability to labour all his life-long, or, in the event of his accident being fatal, that his wife and children will derive financial benefits sufficient to maintain them in a reasonable degree of comfort.

Let me now add a few of the arguments with which I concluded this portion of my report. I am quoting from paragraph 828 and succeeding, paragraphs : -

Under Employers' Liability laws, employers are compulsorily constituted the insurers of their employes and employees, to .the extent at least of being able to make good injuries which it was in their power to avert - proof of which is frequently the origin of ruinously expensive legal proceedings - j'et, while this responsibility is placed upon them and while they may seek to. escape ruin by effecting contracts with insurance companies, not only have they to sustain a higher burthen of cost than State insurance involves, but are left open to speculative lawsuits, and a condition of uncertainty and harass from which escape is impossible. But while the burthen is laid upon employers, the measure of protection for workers is seriously reduced - indeed jeopardized - by reason of the legal proceedings the notoriously unsatisfactory liability laws encourage ; litigation costly alike to the parties concerned, and to the country ; injurious to the good relations which should exist between employer and employed ; damaging to the industrial progress of the community ; litigation, in fact, which practically destroys the beneficent ideal of Employers' Liability laws. The principle of State intervention having been recognised by these laws, State responsibility necessarily follows. The care of the helpless-

And although I am quoting words which I have already quoted from another portion of the report, my summing up would be in-' complete if I did not make the quotation again--

The care of the helpless is regarded by every civilized nation as a duty of Government, and the higher the type of civilization developed the greater the interest evinced in the benevolence extended to those in need, and there seems no valid reason why the State should not intervene in certain cases, to prevent the occurrence of the distress it is willing to relieve. The question of cost is of importance, but there can be little doubt that a State system, embracing all workers, and conducted without view to securing profits for shareholders, can be maintained at rates of premium no higher than those now paid for Employers' Liability insurance with public companies. Even if this were not so, the freedom from claim, real or speculative, which State insurance would confer upon employers, yields advantages far outweighing any Small difference in cost. At the present time in this colony (and I may say in this Commonwealth) any employer is liable to actual ruin consequent upon the occurrence of serious accident amongst his employes, and from this risk State insurance would free him. Premiums should be imposed upon the principle of trade risk, and every employer should be charged rates .corresponding to the element of (lunger involved in his works or enterprise. The worker, on the other hand, would pursue his labour with less risk of injury, and with the knowledge that its occurrence would be followed by substantial relief from an entirely reliable and unprejudiced source. The necessity for litigation to enforce his rights would no longer exist, and the unhappy quarrels between employer and employed arising from accidents, would not henceforward interrupt their harmonious relationship. Another, and a most important advantage, would be the larger pension or allowance benefits that would accrue to the workers, as compared with the amounts the3' now grudgingly and with difficulty obtain. I beg, therefore, to recommend - (1) The adoption of legislation enacting the compulsory insurance by or with the State, of employes and employees against accidents in their trade or calling. (2) That the premiums for such insurance be payable by the employer. (3) That contracting outside the insurance obligation be prohibited, and any employer guilty of attempting to procure a worker to such a contract, to be liable to severe penalty.

Mr. President,

. I tender to you "and the members of this Senate my profound thanks for the attention that has been extended to the remarks which I have had the honour to submit to my brother senators. If in bringing forward this matter, I have laid myself open to the charge of being a State socialist, I care not. If that which is good, if that which is valuable for the whole community be State socialism, then I give it my adhesion. But I am not among those who can be claimed to be rabid on any one point, so far as my knowledge extends. I took this matter up almost by accident in the first instance, and now I advocate it by conviction ; and I am one of those who, having put his hand to the plough, has no intention of looking

back. If there is one man in Australia, more than another who is responsible for the introduction of old-age pension legislation within the limits of what now constitutes the Commonwealth, it is myself and the information which I collected upon the subject . is contained in this volume - a volume that is not made up of lengthy appendices- because there are only six pages of appendices in it - but a volume which gives evidence of large research and very wide knowledge attained. And as, happily, I have taken a large part in the introduction of the old age provisions which, however incomplete, still grace the statute-books of Victoria and New South Wales, I hope that the speech which honorable senators have listened to with so much patience, and so much courtesy, may be the first practical public effort of the Federal Legislature in inaugurating a system of beneficent care for the workers and beneficent protection for the employers - a system, sir, that will come as surely as the sun rises, and when it comes, it will be so much the better for the industrial concerns of the Commonwealth of Australia.

<page>2477</page>

Senator Harney

- I very much regret that I feel myself called upon to break in upon the continuance of what promises to be a most interesting debate. Indeed I may say that I have" seldom listened with greater pleasure to an address than I have to that which has just been delivered by Senator Lt.-Col. Neild. But we have, I think, in this Senate to take care on all occasions that we are keeping within the limits of the Constitution. Now, reading section 51, subsection (14) of the Constitution, it seems to me - although the matter is one by no means free from difficulty - that the proposal made by Senator Lt.-Col. Neild is not within our jurisdiction. I can well understand that Senator Lt.-Col. Neild thought that it was, and indeed, although I am going to put forward . certain reasons to justify the position I am taking, I do it with great deference, and am very open to be convinced to the contrary, because the language of the section is of a most ambiguous and doubtful character. It says -

The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth . . . with, respect to insurance other than State insurance, Now the question is, does that mean that we have power to deal with all classes of insurance except insurances effected by the States that are part of this Commonwealth ?

Senator Lt Col Neild

- Mr. President, I rise only to ascertain whether Senator Harney is submitting a point of order with
A

view to obtaining your decision in the matter.

The PRESIDENT

- I understand Senator Harney is making a speech.

Senator Harney

- I desire to speak to a point of order.

Senator Drake

- It is rather late to take that as a point of order.

Senator HARNEY

- I am arguing that we have no jurisdiction. I confess to great unfamiliarity with the rules of parliamentary debate, but I thought that when an honorable senator raised a point, he would be entitled to elucidate it.

Senator Playford

- - The honorable senator is entitled to argue the matter as a point of order.

Senator Harney

- Mr. President, you understand that I am raising this question as a point of order t

The PRESIDENT

- Very good.

Senator Harney

- My point of order is that the question is outside the province of this Parliament. The words in the Constitution provide that Parliament shall have power to make laws for the peace, order, and good government of the Commonwealth with respect to insurance other than State insurance. That provision can be read in two ways primdfacie : to mean that we have power to deal with every class of insurance other than insurances effected by the States that are part of the Commonwealth ; or to mean that we have no power to deal with any class of insurance which answers to the generic description of a State

insurance. '

Senator Drake

- That is, national insurance.

Senator Harney

- Yes. There is, as is well known to everybody, a broad distinction between insurances where the governing body guarantees the fund, and the regulation of insurance where private bodies guarantee the fund. Now, I think that the words in the section are intended clearly to draw that distinction. We, the Commonwealth, have power to make laws for the peace, order, and good government of all private insuring bodies, but we have no right whatever to make any laws in reference to national insurance. That is what I take to be the meaning of the section, for this reason : the Commonwealth is made up of two branches - the States and the Central Government. The Central Government has no general jurisdiction over the people in the Commonwealth, but it is given a controlling and superintending jurisdiction over what the States do, and is also given a special original jurisdiction. I think this section does not confer upon the Federal Parliament an original jurisdiction to deal with the insuring of the four millions of people resident in the Commonwealth, but it gives it a controlling and superintending jurisdiction over the "insurances that are lawfully effected outside the Federal Parliament.

Senator Sir John Downer

- The overlap, that is all.

Senator Harney

- It will be at once obvious that if we read " insurance " here to mean that we ourselves can become insurers, then we clothe ourselves with various social attributes that otherwise are not given to us, because you can make the effecting of insurance a portion of the industrial and social life of nearly everything in the Commonwealth. You can interfere with factory laws, you can interfere with mining laws, and with infants and various other matters that are really not intended to be controlled by the Central Government at all. Bearing out the truth of what I say, we find that where it was intended to give original and independent justification to the central Government to deal with these matters, the Constitution does so specifically. It says "old-age pensions." A system of old-age pensions is undoubtedly a system of insurance.

<page>2478</page>

Senator Lt Col Neild

- Not necessarily.

Senator Harney

- No ; nor is it necessary for my argument that it should be necessarily so. If we read "insurance" as conferring upon us the right to do anything which falls under that generic term, clearly the Constitution confers on us the right to establish old-age pensions. When, therefore, it confers specifically upon the central Government the power to deal with old-age pensions, it thereby implies that the more expansive word " insurance " where used shall not include the special power which is conferred upon us with reference to old-age pensions. I candidly admit - and I hope that Senator Sir John Downer, Senator Dobson, and other legal minds will endeavour to elucidate the question which I put - that we have to give a different connotation to the word " State " in the first part of the section, from that which we have to give to the word in the second part. Because, if we make the attributes of that word alike in both cases, clearly "insurance extending beyond the limits of a State," has reference to insurance affected by the component parts of this Commonwealth.

Senator Sir John Downer

- Not quite that either.

Senator Harney

- Therefore I think we have to read it in this way : In the phrase "insurance other than State insurance," the word insurance is used in its generic sense of Government or national insurance. You contra-distinguish two things that are well known - insurances that are affected by private companies, and insurances where the governing body supplies the funds.

Senator Sir John Downer

- You do not interfere with private companies at all.

Senator Harney

- No, you do not. I say that the phrase "State insurance" was put in more particularly to define the class of insurance that is intended.

Senator Sir John Downer

- It is a limitation.

Senator Harney

-That is it. It is intended to define what class of insurance we have power to deal with, and to exclude the class that answers to the general description of State insurance. It gives to the word " State " not the meaning that is generally implied, but that which is specifically implied, namely, insurance conducted by one of the States. There is that difficulty in considering what is meant by the word State. It is in every way a difficult point ; and while the Constitution Act is to be commended in many respects, I think there is a little looseness and ambiguity in this provision.

Senator Sir John Downer

-I think there is no looseness or ambiguity at all. The language of the Constitution was made terse for the purpose of defining the particular difficulties that are suggested to arise from short words being used. The intention of the Convention, as I respectfully suggest to the Senate, was that first of all the Parliament of the Commonwealth is to have a general control over all insurance laws.

Senator Sir Frederick Sargood

- And can pass such laws.

Senator Sir John Downer

- It can pass laws relating to insurance, subject to a limitation. That is the first proposition. The next point is - What are the limitations? " Other than State insurance." That means what it says - not a word more and not a word less. It means that if any State as a State passes any law relating to insurance that law shall be supreme within the State.

Senator Harney

- That is obvious.

Senator Sir John Downer

- That is obvious. We have next got something beyond ; and this was really considered very much in the Convention. Whilst we were very anxious to preserve the right of each State to legislate with respect to insurance within its limits, we did not intend by any possibility to give the right to a State to exercise those powers beyond its own limits . That is what I meant by using the word "overlap." As I take it, this Parliament has a general control over laws relating to insurance. We have no right to interfere with any State making any insurance laws that it pleases. But if a State in making those laws chooses to go beyond its limits, and overlaps the laws of another State, then we have jurisdiction with regard to the overlapping, and nothing else. I agree with Senator Harney in his point of order, that this particular proposition which is before the Senate at the present time, is to make national that which was never intended to be made national. It is a proposition for State insurance.

Senator Sir Frederick Sargood

- Commonwealth insurance.

<page>2479</page>

Senator Sir John Downer

-I mean Government insurance - insurance by the Government of the Commonwealth. The very condition of the Constitution is that so far as Government insurance is concerned, it is to be left to each particular State, and is never to be interfered with by the Commonwealth ; but where the State laws overlap , the laws of another State the Commonwealth Parliament may intervene.

Senator Dobson

- What about the Australian Mutual Provident Society 1.

Senator Sir John Downer

- I wish to be distinctly understood. Insurance generally is under the Commonwealth. The Australian Mutual Provident Society, and every other society of the kind, is, therefore, under the Commonwealth. The only thing that is not under the Commonwealth¹ is State insurance, which means Government insurance by the particular State. That is retained by each State, except to the extent to which in their legislation the States overlap and endeavour to carry out legislation beyond the limits of their jurisdiction. In this particular case, the motion is a general proposition that the Commonwealth shall undertake general

Government insurance for the States.

Senator Lt Col Neild

- It does not say so.

Senator Sir John DOWNER

- It means that, does it not?

Senator Lt Col Neild

- No.

Senator Sir J OHN Downer

- I think it means that. We are dealing with a great question of principle, and it is important to come to a sound decision about it. I take it that the motion is to ignore the States in regard to State insurance, and to 'take away from any State the power of legislating in respect of Government insurance, handing this power over to the Commonwealth.

Senator Lt Col Neild

- No, 'the honorable and learned senator misapprehends, me altogether.' Senator Sir John Downer. - I do not think so. I think it must inevitably follow, because the proposal undoubtedly is that 'the Commonwealth Government should insure every one throughout its territory. If the Commonwealth Government is to do that, then that is Government insurance. We cannot provide for Government insurance throughout the Commonwealth without interfering with the rights which the States possess to make their own laws in respect of such matters, and without interfering with State insurance, which was most carefully considered by the Convention, and specially reserved. It is on these grounds that I agree with the objections raised by Senator Harney, and hope, Mr. President, you will agree with his views.

Senator Lt Col Neild

- I do not propose to combat the arguments which have been raised, so far as they relate to sub-section (14) of section 51 of the Constitution Act. To begin with, I doubt whether one of the Houses of Legislature is in a position to legally determine the authority conveyed by the Commonwealth Constitution Act. It may be convenient to determine these matters sometimes, but whether that determination should be final is a matter that would rest with the High Court. Both the honorable and learned senators who have addressed themselves to the subject - and especially Senator Sir John Downer - have misapprehended the true intent of the motion. It is simply an expression of opinion that State insurance against industrial accidents should be established throughout the Commonwealth. It does not state by whom. The fullest effect could be given to this motion by the States themselves establishing systems within their own borders. We are the representatives of the States. The State Governments might well take the mature advice of the States' representatives in Senate assembled, and deal with this matter within their own boundaries.

Senator Playford

- But we have no right to dictate to the States what they shall do.

Senator Lt Col Neild

- This is not dictation - it is simply an expression of opinion:

Senator Sir William Zeal

- Of what value would it be?

<page>2480</page>

Senator Lt Col Neild

- Sub-section (37) of section 51 of the Constitution Act empowers the Commonwealth Government to pass laws in respect of -

Matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law.

Therefore, under the influence of a discussion here or elsewhere, any one of the State Parliaments can ask the Federal Legislature to legislate for them on this matter. I do not think it would be seriously argued that sub-section (14) would be a bar to the introduction of State insurance, if taken up by the Commonwealth Parliament at the request of any State or States. That being so, and as the motion is only an expression of opinion, surely it comes under the heading of a matter which might be referred to us, and, perhaps, will be referred* to us, under sub-section (37) of section 51.

Senator Sir John Downer

- But it is not referred to us.

Senator Lt Col Neild

- It has not been referred to us. I do not know whether I should be justified in making a reference to the fact that it is seriously proposed in another House to discuss an invitation to the Parliaments of the States to ask the Commonwealth Parliament to deal with certain matters relating to factory legislation. That action is proposed by an honorable and learned member of the other House, who was one of the framers of the Constitution, and surely it must be equally in order for us to express an opinion which might, and possibly will, result in inducing action to be taken in one or more of the State Parliaments in the direction I have indicated. This is in no way dictating to any State Parliament. I may express an opinion to an honorable member "without dictating to him. An opinion may be something that is most polite and inoffensive, while dictation involves something of a very different character. I trust, Mr. President, that, having regard to the conditions of sub-section (37) of section 51 of the Constitution Act, you will rule that the motion, as an abstract one, may be discussed in the manner indicated.

The PRESIDENT

- I think it will perhaps save time if I at once give a decision concerning the matter which has been raised. I give; that decision now, because in my opinion there is nothing really to decide about. The position is this : An abstract proposition has been moved by Senator Lt.-Col. Neild, in which he invites the Senate to express an opinion. A so-called point of order, which is rather a point, not of order, but as to the construction of the Commonwealth Constitution, has been raised by Senator Harney. I do not think it is at all necessary to decide that question, even if I felt myself competent to do so, because this abstract proposition can undoubtedly be debated by the Senate. Whether it can be given effect to directly, or by an alteration of the Constitution, there is nothing to prevent the Senate from discussing any abstract proposition whatever. Supposing, for example, to take a clear one, the proposition were brought forward that it is desirable that each State should be represented by eight senators. No one could say that the Senate could not discuss that proposition, although to give effect to it an alteration of the Constitution might be required. Therefore, I rule that this debate can be proceeded with, and that there is not the slightest necessity to give a decision as to what the sub-sections of section 51 of the Constitution mean. Honorable senators who have addressed themselves to the point of order can speak again, because they have not spoken to the proposition.

Debate (on motion by Senator Harney) adjourned.

COMMITTEE OF ELECTIONS AND QUALIFICATIONS

Saunders v. Matheson.

Senator Sir JOHN DOWNER

- I have to bring up the report of the Elections and Qualifications Committee upon the petition of Henry John Saunders against the return of Alexander Percival Matheson as a member of the Senate, together with the minutes of the proceedings of the committee. I move -

That the report be printed, and its consideration be made an order of the day for Wednesday next.

I think this is a matter of very great importance, and ought to be considered as soon as possible.

The PRESIDENT

- It is a matter of privilege.

Senator Sir JOHN DOWNER

- Yes. I therefore ask that it be considered on Wednesday, but, although I am moving this motion, I will not undertake to move that the report be adopted. The report was arrived at by a bare majority of the committee, and in the interval I shall have to consider my position, and what is my duty.

<page>2481</page>

The PRESIDENT

- I would point out that under Standing Order No. 374 it is necessary that the proceedings and report should be brought under the consideration of the Senate by a specific motion, of which notice must be given in the usual manner. It seems to me that under that standing order before the report of the committee can be considered, or before any decision can be come to by the Senate upon it, notice will have to be given of a specific motion.

Question resolved in the affirmative.

DUTIES ON IMPORTS

Ordered

(on motion by

Senator Clemons

for

Senator Staniforth

Smith) -

That there be laid upon the table of the House, simultaneously with the Federal Tariff Bill, a return showing the following particulars, for the year 1900 if possible, and if not, for the year 1899 : -

. The rates of duty existing in the various States of the Commonwealth on each article of import.

The value of imports of each of such articles in each State -

From the other States of the

Commonwealth

From outside the Commonwealth.

The total imports of each commodity.

The amount of duty collected from imports outside the Commonwealth.

The total value of each class of commodity imported into the Commonwealth.

The total revenue received on each class of commodity imported into the Commonwealth.

The proposed duty on each class of commodity.

The estimated increase or decrease of revenue caused by the proposed Tariff on each class of commodity.

SERVICE AND EXECUTION OF PROCESS BILL

Report adopted.

PROPERTY FOR PUBLIC PURPOSES ACQUISITION BILL

In Committee

(consideration resumed from 4th July, vide page 2029).

Clauses 2 to 8 agreed to.

Clause 9 (Compensation for acquisition).

Senator HARNEY

-I thought when we were at clause 6 that we were dealing only with a sub-clause. I had an amendment upon that clause to which I wished to speak. I wish to insert something between sub-clauses (2) and (3).

Vice-President of the Executive Council

Senator O'CONNOR

. -I would not like to take advantage of honorable senators being taken unawares when clauses are being put, but the honorable and learned senator knows that we cannot now go back. However, I will take care that he has an opportunity to alter the clause if necessary.

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 -

the surface of the overlying soil is disturbed ; or

the support to such surface is destroyed or injuriously affected by the construction of the work ; or .

any mines or underground workings in or adjacent to such land are thereby rendered unworkable or injuriously affected.

Senator Sir FREDERICK

SARGOOD (Victoria). - This clause provides that compensation shall not be allowed unless, amongst other things -

Any mines or underground workings in or adjacent to such land are . . . rendered unworkable or injuriously affected.

In one of the Victorian Acts - I think it is the Mining on Private Property Act - there is also included damage to waterholes, tanks, or wells, and it appears to me that a similar amendment would be advisable here.

Senator O'CONNOR

-Is it not really provided by paragrapha -
The surface of the overlying soil is disturbed.

Senator Sir Frederick Sargood

- The surface may not be disturbed in the case of a well, and yet the well may be drained.

<page>2482</page>

Senator O'CONNOR

-I have no objection to putting in words that will carry out the honorable senator's view, and will for the purpose recommit the clause.

Clause agreed to.

Clause11 agreed to.

Clause12 -

Every person or State claiming compensation in respect of any land so acquired, or work or other matter done under the authority of this Act, shall within ninety days from the publication of such notification, or within such further time as a Justice of the High Court upon the application and at the cost of the claimant may either before or after the expiration of such ninety days appoint in that behalf, serve a notice in writing upon the Minister, and a like notice upon the Attorney-General, which notice shall set forth the nature of the estate, interest, or title of the claimant in such land, together with an abstract of title, and if the claimant claims in respect of damage the nature of the damage which the claimant has sustained or will sustain by reason of such acquisition or work or matter, together with full particulars of such damage, and such notice shall be in such form as may be prescribed.

Senator WALKER

(New South Wales).I desire to ask the Vice-President of the Executive Council whether he thinks the limit of 90 days provided for in the clause is sufficient to cover all cases?

Senator O'Connor

-That is not the limit ; the Court has power to extend the time.

Senator WALKER

- But a person must go to the High Court for the extension, and he may not be here. I know of many Australians who happen to be in Europe, and 90 days would not be sufficient time for them to get notice and take proceedings.

Senator Sir Frederick Sargood

-Would they not leave a power of attorney behind them to deal with such things?

Senator O'CONNOR

- I think they could easily get things settled in a period of 90 days, which is roughly speaking three months. That is the period used in all the Australian statutes, and the period which I believe is also used in the English statutes.

Senator WALKER

- There is a good deal in what Senator Sir Frederick Sargood has said with regard to the power of attorney, and I will not press any amendment.

Senator HARNEY

- The provisions in this clause as to paying compensation are these : - The Government can by the action of the Governor-General, on notification in the Gazette, actually divest the owner of all property in his land, and substitute therefor a mere claim for compensation. That is really the effect of it. Since the mere action of the Governor-General does that there certainly is no reason why the owner should be given an opportunity of saying anything in answer to it, because it is an arbitrary exercise of power. But I think it is right that he should have an ample opportunity of making his claim for compensation. Under the Bill the 90 days run from the time of publication in the Government Gazette. The Government Gazette is the one organ that people are not likely to see.

Senator O'Connor

- And publication in a local newspaper.

<page>2483</page>

Senator HARNEY

-I wish to substitute the provision that there shall be some attempt made to personally serve the person.

Therefore, I wish to have inserted between sub-clauses (2) and (3) of clause 6, the short sub-clause which I have circulated. The amendment I wish to move in clause 12 is merely consequential. What is provided for in the amendment I wished to move upon clause 6 is this : -

A copy of such notification shall as soon as practicable be served either personally or by registered letter upon the owner or owners and upon every party interested in said land, and resident within the Commonwealth, or upon such of said parties as shall upon diligent inquiry be discovered.

Then I make the 90 days run from such service and not from the date of publication. In the English Act, of which I have had some experience, the system is this : Before any land can be taken by the promoters of an undertaking they must have all particulars of the land taken and descriptions of it served upon the owner who has already had 21 days within which to show cause why the land should not be taken. If that period is allowed to pass without cause being shown the land is taken, and the compensation assessed in the same way as is done under this Bill. In England, therefore, under exactly similar circumstances, the law requires that this notice shall be served upon the party interested, and that he shall be given a certain time to object. I would dispense with the necessity for giving a time to object, for the reason that under the English Act it is possible for a person to make out a case which would be an answer to the taking of the land, while under the system being established here it is impossible for the owner to make out any case against taking the land ; the only case he can make out is as to the compensation. Therefore, I would adopt the English provision to the extent of giving the owners notice personally that the land had been taken, and make the time in which they shall move in reference to the compensation run from the service. Of course, it will be seen that it will be hard in many cases to find out the whereabouts of these people and to effect service upon them. That has been recognised in England, and I have adopted the words of the English Act, which are sufficiently elastic to meet such cases as that. I propose to provide that -

A copy of such notification shall as soon as practicable be served either personally as it is in England - or by registered letter upon the owner or owners, who may be defined as the persons having an interest in the land.

I also intend to add -

And resident within the Commonwealth. If the owner moves from the Commonwealth, he should leave some one here with a power of attorney. I would not ask the Government to serve a notice upon a party out of the country. Then I would say -

Or upon such of said parties as shall upon diligent inquiry be discovered.

It may be said - "Who is to be the judge as to whether the inquiry is diligent?" The answer is that, if you allowed a provision like that to go into the Bill, you would, at all events, throw the onus upon the Government, before they divest a person of his property, of making efforts to find out where the person is. In this country, where descriptions of land are to be found in the Titles-office, there should be no difficulty whatever in intimating to the actual person by registered letter, if not by personal service, that it is intended to take his property.

Senator Sir Frederick Sargood

- It is difficult here sometimes.

Senator HARNEY

- It is not one-tenth as difficult as in England, where there is no central office in which a search can be made. There are tens of thousands of abstracts of titles in England which could not be found out except on personal inquiry. So that the English Act throws upon the promoters, who are similarly situated to the Government in this case, the duty of intimating to the parties interested what they are going to do before they take the land. It is not too much to ask the Government of the Commonwealth to do that when, in 99 cases out of 100, they only have to go to the Titles office in order to find out all the particulars they require. I know that the Minister will at once say - " Oh, but the 90 days' notice is not a fixed period, because you can get the Judge to extend it, and not only that, but you can go to a Judge after the time has passed and have it retrospectively extended." But still there is the trouble of going to the Judge. A suitable provision would be such a one as I have drafted, making it necessary for the Government, before they take a private person's property, to notify to him by some means - not by putting a notice in the Government Gazette or in a local newspaper that he would not see - what it is they intend to do. Suppose the person interested were in England, leaving a power of attorney in Australia. In 99 cases out of every 100 the land would be taken, and the owner would know nothing about it. He might not know for months

or even years afterwards. The person interested might not be using his land, and when he returned he would find the opportunity was past, the 90 days having expired. If he went to the court and said he wanted an extension of time, the Judge would probably say -" We do not mind an extension within a few months after the term has elapsed, but here you come years after "; and I do not think the court would recognise his claim. Therefore I think we should substitute actual service in some form for publication in the Gazette. I fully realize the trouble of those who will have to administer the measure, but it is not greater than the trouble imposed upon those who have to administer similar measures in other parts of the world. We shall be told that it will increase the expense, and cause the Government to make troublesome inquiries. Why should they not? After all, if you take away a person's land you are doing something quite as injurious to his interests as if you got a verdict against him in a court of law. But you could not get a verdict without ample notice. You could not issue a writ by putting a notice in the Government Gazette or in a local paper. You have to get substituted service, and give notice in due time ; and similarly you should not deprive a man of his land without giving him notice.

Senator Glassey

- You cannot block an important public work for such a cause as that.

Senator HARNEY

- The amendment I propose does not interfere with the power of proceeding with the work . Publication in the Government Gazette of the fact that the land is to be taken is sufficient, whether the owner sees it or not. Such publication takes the land, even with the amendment I suggest. It is the compensation I am thinking of. The Bill practically says, "Not only shall we take your land, but we shall practically give you no notice that you are entitled to compensation." I ask that real genuine notice shall be given to the owner that he has a right to apply for compensation. As to the phraseology of the amendment, honorable senators need not trouble themselves, because it is taken from the Lands Compensation Statute of England. I move now, to test the question -

That the word "publication" be omitted with a view to insert "service."

<page>2484</page>

Senator O'CONNOR

-I am afraid I cannot accept the amendment which has been moved by Senator Harney, because it would alter very seriously the whole machinery of this measure. The honorable and learned member is quite right in regard to the practice under the English Act. But there is a great difference between the powers given under the English Act and the powers given under ' this Bill. Under the English Act, the powers are given to private individuals - the promoters of companies and other persons - who, for their own profit and private gain, wish to take away the rights of other persons. The principle of that legislation is that where one man, for his private purposes, wishes to interfere with the property of another, he must be very careful that everything possible is done to see that the rights of that person are in no way unfairly affected. But the class Of cases we are dealing with now is altogether different. In the States of Australia, for many years past, power has been given to the various Governments to acquire land for public purposes. The procedure set forth in the Bill has been found to be expeditious, and it seems to me to be fair and reasonable, that the land should be acquired by that method.

Senator HARNEY

- There is no quarrel with that.

Senator O'CONNOR

- I am pointing out what the Bill tries to do. There is nothing new in this proposal. The whole tendency and course of legislation in all the States has been to give power to acquire land in this way. The honorable and learned senator says that he does not wish to interfere with the power of acquisition. But if this amendment is carried I am not at all sure whether it will not have that effect. I am not at all certain that the court might not rule that, as it was made the duty of the Government to serve these notices either personally- or by registered letter, such service is a condition precedent to the rights and powers given under the previous clauses. Whether this is so or not - because it is a point that can be remedied by an amendment - there is a serious objection to the proposal, even if it only deals with compensation. If there is one thing which it is essential to have settled with regard to the acquisition of land for public purposes it is that the country shall know what it has to pay, and that the costs shall be settled as soon as possible. We all know that one of the greatest difficulties in ascertaining what public works are to cost is in finding

out what the land resumption is to cost. Public works are thus hampered and difficulties put in the way before the parties can be got together in order to agree upon the value of the property taken. If the amendment is adopted, it must necessarily lead to still greater difficulties. A provision of this kind is all very well in the English Act, but the circumstances are entirely different in Australia. We have large areas of land with a sparse and floating population. A man may occupy a lot in a town for five or six years, and he then may go away, no one knows where. It may be impossible to discover his whereabouts. He may die, and it may be impossible to find out who is interested in the land. In regard to country lands, it would be practically impossible to carry out the amendment serving any one, either by registered letter or by personal service. Then it is said, " You must make diligent inquiry." Is it not unsatisfactory to move an amendment in that form ? What is the meaning of "diligent inquiry"? What is "diligent" in one case may not be in another.

Senator Glassey

- It will depend on the Judge.

Senator O'CONNOR

- It will depend upon the interpretation the Judge puts on the words. All these difficulties will delay the settlement of the matter. Until the Government has served personal notice, or until diligent inquiry has been made, it would be impossible to bring to a head the claim for compensation. Then see what other difficulties it would lead to. . It is not only the personal owner who is affected. The people interested in the property are to be served, so that inquiries will have to be made as to who are the parties interested. This would mean making searches in all sorts of documents, which may not be easily accessible. All these inquiries would cause delay, and prevent a settlement of the question. What benefit would it all be to the person interested ? It has been determined that for the public good the land is to be taken. He cannot stop it being taken. All he has to do is to make his claim for compensation.

Senator Walker

- Sometimes he will know nothing about it.

<page>2485</page>

Senator O'CONNOR

- Of course he may know nothing about it. He may have gone to another country. All these things may happen. All the Government can do is to take the man's land and give notice in the Government Gazette and in a local newspaper.' In most cases there is no doubt that the persons interested in the property will very soon know all . about it. What happens really in the bulk of cases is this - the Government never put in operation these compulsory clauses unless they have to. It is much better for them, and much quicker, to acquire land by coming to an arrangement with the parties, if they can do so, and they generally do. But if they do not come to an arrangement, the owner knows that the notification has been given. In a few isolated cases in which the person cannot be found, and there is no attempt to treat with him, this provision would apply; but those are the cases in which it would be almost impossible to carry it out. I therefore ask the committee not to go back upon the tenor of the legislation which has taken place in all the States for many years past in regard to acquiring property in the public interest. It would be a retrograde step to go back to the provisions of the English Act, which are all very well under entirely different circumstances, but are not applicable here. The only result of the amendment would be, not to benefit to any great degree the persons interested in the land, but to put . a great hindrance and obstruction in the way of carrying out public works and estimating the cost of them, which it is to the interests of the Commonwealth to have settled as early as possible. I therefore oppose the amendment now made. If the amendment is not carried, I presume that the honorable and learned senator will not insist upon the other of which he has given notice.

Senator HARNEY

(Western Australia). - I know that my honorable and learned friend, the Vice-President of the Executive Council, 'will take any suggestion like this in good part. My only desire is to try and improve the Bill. I do not think I ought to withdraw the amendment in view of the information before me. I want honorable senators to understand the position. I entirely agree 'with what

Senator O'Connor

has said, that since this land is to be acquired for public purposes, and since the person from whom it ' is taken has no answer to the action of the Government, it will be useless to hang up the question of its

acquisition upon any such pleas as I have put forward. The publication of the notice in the Gazette,

according to the provision of the Bill, at once vests the land in the Government, and leaves to the owner only a claim for compensation. I want to insure that he gets notice when this has taken place, so that he may set about obtaining his compensation.

Senator O'Connor

at once admits that in England, where private promoters take land in a similar manner, it is right that full notice should be given to the person from whom it is taken ; but he pleads that the Government should be exempt from having to take the precautions which the security of private citizens demands

Senator O'Connor

- I did not state the proposition in that way.

Senator HARNEY

- That is really what it comes to.

Senator O'Connor

- What I said was that where a man enforces these rights for his own personal benefit there will always be a great desire to see that he does not unduly infringe the rights of the other person, but that where the power is exercised for the public benefit the position is different.

Senator HARNEY

- The result is the same. What the Minister really says is this: "I recognise that this thing is possible. I acknowledge that it is done in England, but I say that it ought not to be done here, for the reason that the Government is the party who is taking the land, and not a private individual." I think that is no reason at all. The Government, when it interferes with private property, whether for public purposes or not, ought to be required to exercise the same precautions as we demand on the part of private individuals. It is said that in the colonial Acts, before federation, we always followed the course now proposed. That is not so. I find that the Victorian statute is based on the lines adopted in England. It is provided in section 10 of the Lands Compensation Act, 1890, that -

All notices required to be served by the board upon the persons interested in or entitled to sell any such lands shall either be served personally on such persons or left at their usual place of abode (if any such can after diligent inquiry be found) ; and in case any such persons shall be absent from Victoria, or cannot be found after diligent inquiry, shall be left to the occupier of such land, or, if there be no such occupier, shall be affixed upon some conspicuous part of such land.

Senator O'Connor

- That is where notice has to be served.

<page>2486</page>

Senator HARNEY

- In Victoria it is provided that notice to be given the parties interested in regard to all lands required for the works to be undertaken, shall be by service on the owners. If those owners cannot be found by diligent inquiry, then notice is to be served on the occupier. That is all I ask. I do not care what phraseology is used, but I think it right that some provisions should be inserted, determining that notice shall be given of the period from which the right to apply for compensation arises, in some more accessible way than by publication in the Government Gazette. No one reads the Gazette, or the advertisements in the local papers.

Senator O'Connor

- Unless he is hoping that the Government is going to resume some of his land.

Senator HARNEY

- Perhaps he has not any such hope. I admit that it is a matter for hope in some cases. Honorable senators will see the difficulty in which property owners will be placed if the clause is passed as it stands. The Executive Council meets and decides that the land shall be taken. An advertisement is put in the Gazette, and in the local newspaper. The person affected by that notice knows nothing about it. Ninety days pass by before it comes to his knowledge, and then he comes to the Government and says - " I want compensation." They reply - " You are too late." The answer made by the Government is that by going to a Judge of the High Court the party may get the time extended.

Senator Sir JOSIAH Symon

- After paying the costs.

Senator HARNEY

- It means expense, and something more than that. Every court would be largely affected by the length of time which had elapsed. I can conceive of cases, especially in Australia, where five years might pass from the date of taking over the land without the owner knowing that it had been acquired at all. Think of the position of a person going to a court in such circumstances, and saying - " Please, your Honour, I know I am entitled to only 90 days' notice, butt. did not read the Gazette, and now I want an extension of time after five years elapsed." What would the Judge say 1

Senator McGregor

- He would sympathize with him.

Senator Glassey

- He would say - "I am sorry for you, but you must pay."

Senator HARNEY

- Yes ; because a Judge in administering the law must be guided by some principle. What the Judge would say is - " We are here to interpret an Act of. Parliament. The Legislature has decided that that notice in the Gazette was notice to you. It was for them to decide. We have to construe the Act as we find it, and it says that notice published in the Gazette shall be notice to you. Why did you not read the. Gazette ? It was your business to read every Gazette when there was such an extraordinary Act of Parliament passed." Lay mem:- ben of the Senate must not think that it is within the province of a Judge to exercise common sense as we understand it, and to say to such a person - " You cannot really be blamed, because no one reads the Gazette." The Judge has .to interpret the law as we make it ; and in the case I have quoted it would be his duty to say - "The law makes the notice published in the Gazette sufficient. That publication was made, and I must assume that notice was given to you. You have done nothing until long after the 90 days have elapsed, and I can give you no redress." If a Judge said - "I will not enforce this, because no one reads the Gazette," he would be entering upon the province of the Legislature. I leave it entirely to my honorable and learned friend,' Senator O'Connor, to regulate the clause in the way he thinks fit, but what I propose to do is certainly in accordance with the English Act. All I require is, that while ample power is left to the Government to divest a private owner of his land in one hour, and to leave a claim for compensation in its stead - while I would give them that power- we shall insist that some clear, definite, unambiguous definition is given to him in order that he may know that the time has come to look for compensation. He should not be placed in the very dangerous position of allowing very much longer than the statutory period to elapse, and then having to trust to obtaining his rights by the loose interpretation of an Act of Parliament which a sympathetic Judge might be disposed to give him.

Senator O'Connor

- Supposing the owner of a property could not be found and notice was posted up on the land, what would be the position then 1

Senator Sir Josiah Symon

- Then.it is the owner's misfortune. We have done the best we can.

<page>2487</page>

Senator HARNEY

- The English Legislature does not make it a hard-and-fast rule that the owner must be served. It says that diligent inquiry must be made. That is a general term ; it throws the onus on the parties taking the land to do their best, to make a bond fide effort to let the other person know of their act. If they fail, after a bond fide effort, to find that person, he must take the consequences. If he could not be found, and if subsequently he were to take action, it would be a perfect answer for those taking over the land to say - "We made a diligent inquiry for you and could not find your whereabouts." There is nothing new in my proposal. It appears in the Land Clauses Consolidation Act, and it has been copied from that into the Victorian Statute. Let me answer one of Senator O'Connor's arguments before I sit down. The honorable and learned gentleman says that if we adopt this proposal it will simply mean that we shall entail a great deal of trouble on the Government, because they will not be in a position for a long time to clear the matter up and pay the compensation. But we might as well have the trouble at either end. If we adopted the honorable and learned gentleman's method, the Government could not give compensation at all till

they found out the owner. Why not find him out when it is necessary to determine the compensation instead of determining the compensation in his absence 1

Senator O'Connor

- We pay the money into a special account.

Senator HARNEY

- It is all right, there is no doubt, but it will be accumulating there until the man whose land is taken can be found. In my opinion we should find the person, and give him the compensation.

<page>2488</page>

Senator DOBSON

- At first I thought that the amendment should be accepted at once, because I really could see no objection to it. It appears to me to be in accordance with the usual way in which we carry out certain transactions connected with land. The Minister has raised two objections. One of them is well founded, but I hardly think- that the other is. He suggests that the course proposed will cause delay in settling the compensation to be paid for land resumed for Government purposes. Senator Harney's amendment will not cause delay, but will really expedite the settlement of the whole matter. Is it not much "better, instead of requiring each owner to search through the Gazette, or to wait till his eye catches in a newspaper an announcement that his land has been taken, to demand of a Government clerk that he shall pop into the post-office a notice to the owner at the same hour that he sends the notice to the Gazette that the land has been taken 1 In my opinion, the amendment will expedite the matter, and that is what the Minister desires should be done. Senator O'Connor is afraid that the amendment may cause trouble and embarrassment to the Government in serving the notice on the owner. Possibly that is correct, but I think that is no reason for throwing aside the amendment altogether. I would suggest to the Minister that he might accept the spirit of the proposal and get the parliamentary draftsman to draft the usual section dealing with the service of important notices. In the first case you would have to define the word " owner," which might mean the person who pays rates and taxes, or the agent having the general management of the property. If no such owner can be found, then you serve the notice on the occupier, and if there is no occupier, you post the notice on the property. If it is not seen by the owner for some time, he has the right to come to a Judge under clause . 90 and explain where he was, and why he did not receive it.

Considering the trouble and the pains which the Government take to send all kinds of blue paper and white paper over- the country, giving us . notice of all manner of things, does it not suggest itself to honorable senators that when a man's land is taken, which is may be worth £100 or £1,000 or £10,000, it is going too far to say that the Government shall not be bound to give the owner a copy of the notice published in the Gazette 1 The. copy of the notice as soon as it is published in the Government Gazette, actually becomes a transfer or conveyance from the owner to the Government. It is in accordance with the ordinary rule of business that the owner should know that his land is taken, and that he should ascertain from the document sent by the Government the exact description of the property acquired by the . State. The notice is practically a conveyance which forms the foundation for the assessment of compensation, and surely the owner should have in his possession a copy of the very document which is the vesting power. It appears to me, that one or two other amendments ought to be made. If I had not been engaged in reading some other document when clause 6 was being passed I would have suggested an amendment providing that the notice in the

Gazette

should contain a full description of the land.

Senator Harney

- This argument arises on clause 12. Accidentally I allowed clause 6 to pass. I am now seeking to have the word service " substituted for " publication " in clause 12. I am moving this amendment on the understanding that if it is adopted the Vice-President of the Executive Council will make the other amendments.

Senator DOBSON

- I think clause 6 should be recommitted in order that we may provide that the notice shall contain a reasonably full description of the land acquired. The notice is the foundation of everything. It is the foundation on which the High Court will assess compensation. In case of arbitration it is really the warrant of the .arbitrators to assess the property, and yet the property-owner has nothing in his possession except

the Gazette to show what part of 'the land is taken.

Senator O'Connor

- Under the clause as it is, there must be a description of the land. In New South Wales the practice has always been to give a conveyancing description of the property.

Senator DOBSON

- The honorable and learned gentleman is perfectly right. There will have to be some description, and there should be a full one. We see in the Bill a direction to the Registrar of Titles that he shall indorse upon the title the land taken. Therefore the machinery of the Act could not be carried out unless a description of the land was given. Another reason why Senator Harney's amendment is required is, that under clause 48 the Minister is authorized to enter upon land and make surveys without notice to the owner. To a very great extent that provision follows that contained in the Tasmanian Act of 1891. I quite agree that it has been found that these Acts, which are in rather a skeleton and vague form, work very well, and there has been no injustice. When we come to think, "however, that a man's land may be taken over at an hour's notice, and that the surveyors may enter upon it without any notice whatever, it appears to me that unless we make provision for these matters, another place will do so, and our legislation may be deemed a little hasty. I therefore suggest that the amendment may be adopted with full notice, so that the Government will not be embarrassed if they cannot serve the owner personally. [158]

Senator Sir FREDERICK SARGOOD

- Speaking as a layman, and one who has had some little to do with this taking of land here and in New South Wales, I am at a loss to understand why what has been the practice not only in the old country, as I learn, but also in Victoria and New South Wales, should be departed from here.

Senator O'Connor

- In New South Wales the practice is precisely the same as in this Bill, and also in Tasmania.

Senator Sir FREDERICK SARGOOD

- Does the honorable senator mean to say that the New South Wales Lands department does not send out a printed notice of its intention to take land?

Senator O'Connor

- I know nothing about that, but the provisions for the acquisition of land in New South Wales are exactly as in this Bill.

Senator Dobson

- The notice to take certainly ought to be given.

Senator Sir FREDERICK SARGOOD

- I quite agree with the honorable senator. But we are entailing upon the owner the responsibility of reading the notice in the Gazette. So far as Victoria is concerned, I know that it has always been the rule to give notice, and the same principle is carried out in connexion with municipal government when land is being sold for rates. It seems to me to be a perfectly reasonable thing, because there need be no delay whatever in the using of the land, since, as soon as the notice of resumption appears in the Gazette, the Government take possession of the land. They have done so on one or two occasions in connexion with land in which I was interested in Riverina. I have no objection at all to that, but I would have very great objection if I did not receive some other notification, because I do not pretend to look at, much less to read, notifications published in the Gazette. I strongly urge the Minister to see whether he cannot concede to the people that which they have had for so many years. If I saw the slightest objection to it, or that it would delay public works, I would be inclined to agree with the Minister, but it cannot do so in any case. I think the proposal is a reasonable and fair one as an ordinary matter of business.

<page>2489</page>

Senator Sir JOSIAH SYMON

- I hope my honorable and learned friend, Senator O'Connor, will see his way to accept, if not the terms, at least the substance of the amendment moved by Senator Harney. At present we are really discussing an amendment moved on clause 12, for the proposed insertion of the word "service," which, if carried, will involve the reconsideration of clause 6, which is "the substantive clause dealing with this matter. I called attention on the second reading to this very provision in clause 6, and I regret that I was not here when the clause was put to the committee, because I had intended moving an amendment substantially the same as that submitted by Senator Harney, with a view to giving effect to his desire, and to what I

think should be the desire of every member of the Senate. The provision as it stands in clause 6 - because we can only consider the amendment in clause 12 by referring to clause 6 - is an exceedingly drastic and - severe method of procedure. It is entirely different from that which has prevailed for the last 60 years, nearly, in the Lands Clauses Consolidation Act in force in England, and which either literally or by adaptation has been in force in most of the States. Senator O'Connor tells us that this provision is identical with that in New South Wales. If it is, the New South Wales provision is a departure from the provision of the Lands Clauses Consolidation Act which I think should not commend itself to our sense of fairness and justice.

Senator Sir Frederick Sargood

- But they give notice in New South Wales.

Senator O'Connor

- I may explain that there are two ways of acquiring land there : Either by the method we are adopting here, or, in the case of railways, where a plan, book of reference, and other information are provided when the owner is given notice. This is the way generally adopted.

Senator Sir JOSIAH SYMON

- I am obliged for the explanation, because Senator O'Connor says that in reference to land resumed for railway purposes the old plan of giving a notice to treat for the land which it desired to acquire still prevails, describing it by its metes and bounds, its situation, and all the rest of it, just as it is described under a conveyance or transfer under the Torrens system. This notice was given to the owner of the land with whom the treaty was intended to be made.

Senator Harney

- And he had 21 days to show cause. «

<page>2490</page>

Senator Sir JOSIAH SYMON

- Then he had a certain time within which he could put in his claim. Of course the effect of the Act is just the same, because the land is taken compulsorily, whether the owner likes it or not. With the principle of compulsorily taking in no honorable senator wishes to interfere. It is essential that the Government in every State should have the power of compulsory acquisition of land for public purposes. The only question is whether we are to exercise that power in the summary and high-handed way which would be permitted by this clause, or whether we are to do what in all fairness we should do, and give notice, unless there is some very cogent reason to the contrary. What possible injustice or harm could it do to the Government to give such notice, if they can? Of course, if it is impossible to give personal notice, then the method suggested, as I understand, is that it should be left on the land. As Senator O'Connor said in an interjection a few minutes ago, you can stick it up on a tree or leave it upon the land, and if the land is not occupied, and the man never sees it, that may be his misfortune, but the Commonwealth will have done all that justice demands in order to procure that he shall be notified.. It is exactly what is done under the common law in England in all cases where land is sought to be recovered, where there is a judgment for possession or a notice to quit to be served upon an occupier of the land, if he can be found. Where he cannot be found it is good service to stick the notice up or leave it on some conspicuous part of the property. Why should that simple method be set at naught, if it is available, in the case of the acquisition of land, not merely by regaining the possession of it, but by absolutely obtaining the ownership of it, where the Government wish to acquire property? It seems to me to be only a fair thing that it should be done, and with one or two verbal modifications, possibly, Senator Harney's amendment ought to be passed. I think to use the words "as soon as practicable," as my honorable and learned friend has done, would lead to some difficulty of definition, and perhaps to litigation. Another expression later on, "diligent inquiry," might, I think, require some modification, because I am sure the desire is that the Government should be facilitated in the acquisition of property for public purposes, while at the same time* no harm is done to the owner. I suggest that the Government should agree that a copy of the notification should be given to the owner of the land within a certain number of days after its publication in the Gazette, and if he cannot be found, or is not known, that a notification should be left upon the land. The point has been raised as to delay, but this method I think would cause no delay, because there is no necessity to interfere with the provision, which absolutely gives the Government the right, at the expiration of the period fixed by the Gazette notice, to take possession of the land. I do not think that ought to be interfered

with, because the policy adopted by this clause is that the publication in the Gazette is that which in effect brings about the acquisition of the land by the Government. There is no reason why that should be interfered with when all that remains to the owner is compensation. But if he does not happen to see the notice in the Government Gazette, what follows 1 Under clause 12, it is true, he may go to a Judge to get the time extended, but at what cost 1 The Judge has no discretion to say, "You have a perfectly good explanation for not having received this notification in the Gazette," and he has to compel the man to pay the costs. If in an innocent way the owner may have overlooked the notification; or may not have seen it in the Gazette, he can only get the concession of additional time by paying the costs, and the Judge cannot relieve him. Is that fair ? Is it fair that, however good an excuse he may have for not having seen the notice which affects his own property, he must still be penalized for not having been diligent in his study of the Gazette by having to pay the costs % There is a limit of 90 days in clause 12, and with that I quite agree, because there is no wish to interfere with what would expedite the business of the Government. But the clause goes on to provide that a man has to give this notice within that period, or within such further time as a Justice of the High Court may direct. I have to remind honorable senators that the land may be taken in "Western Australia, and the owner has to come all the way to the seat of Government, to the High Court, to get a Judge to determine whether he shall have an extension of time beyond three months or not, and the extension can only be had at the cost of the claimant. A more unjust provision than that it would be difficult to conceive. I am sure no one will assent to a penalty of that kind upon a man whose land is being compulsorily taken for the good of the State, and who may never have seen the notice in the Government Gazette. If the: amendment submitted by Senator Harney is adopted, with some such modifications as I have suggested, it will accomplish all that could be desired. By the introduction of the word "service" in clause 12, the reconsideration of the whole matter will be necessitated. The necessary facilities for the acquisition of property by the Commonwealth need not be injured one jot, but justice at the same time may be done to the land-owner, in respect of whom the Commonwealth will have used every fair and reasonable effort to give him notice of what is proposed. If, where he cannot be found or is not known, the notice is stuck up on the property, it will be his own fault, or his misfortune, if he does not receive it. At any rate an attempt will have been made to give him notice, and he will have no reason to complain. I think the latter part of clause 12, whether Senator Harney's amendment is carried or not, should be modified, and the provision requiring that the costs be paid by the claimant should be struck out, leaving it to the discretion of the Judge to say whether he has had a fair excuse, and should be allowed a further extension of time without having to pay for it.

Senator GLASSEY

- I have endeavoured very carefully to follow the legal gentlemen who have been arguing upon this question. I am sure members of the Senate desire to do no wrong, even in the acquisition of land for public purposes, to any individual who may own property. I think also that reasonable publicity should be given, not only by publication of the notification in the Government Gazette, but by its publication in some newspaper or newspapers circulating in the particular district in which the land is required.

Senator O'CONNOR

- That is provided for by clause 6.

<page>2491</page>

Senator GLASSEY

- I think that when that' is done ample provision is made,' and all parties ought to be satisfied. Speaking as a layman, and one who has given some little consideration to questions of this nature, I say that if the amendment proposed by Senator Harney is carried, it will be impossible to work it. Let me give one or two instances. I do not know whether honorable senators -are aware of it, but we have a very peculiar election law in Queensland, comprising, I think, no less than six different qualifications for an elector. One of these is, that if a person owns a piece of freehold land worth £100, free from all encumbrances, he is entitled to be on the electoral roll. If there be a piece of property in which 10, 20, or 100 persons are interested, and the property confers upon each an interest to the value of £100, each is entitled to have his name placed on the roll in respect of his interest in that property. During my strong opposition to this part of the Queensland electoral law I took great trouble, and particularly in the district I had the honour of representing for some considerable time, to see how many persons really and truly were interested in various property blocks. I came upon some most peculiar cases. One was that of a piece of church

property vested in ten members of the church as trustees, each of whom was on the electoral roll as having an interest to the value of £100 in connexion with that property. This may be somewhat beside the question, but I am dealing with the impracticability of working the proposed amendment if it is carried. What were the facts in that case 1 There were no such persons in existence, nor had there been for eight long years. The ten trustees lived only in imagination, and not in fact. Supposing these persons had a legitimate interest as trustees in this land, and some of them had left heirs, how would such an amendment as now is proposed be worked 1

Senator Sir Josiah Symon

- The proposal is that notice need not be given if the owner cannot be found.

Senator HARNEY

- How could the honorable senator serve a notice to quit upon a dead person 1

Senator GLASSEY

- The difficulty is that a dead person may leave heirs, or trustees may have an interest in the property.

Senator O'Connor

- - The words used are " every person interested."

Senator GLASSEY

- Every person interested in a property, whether they be heirs or trustees having a legitimate interest, would have to be notified.

Senator Sir Josiah SYMON

- What crime have they committed that they should not 1

Senator GLASSEY

- I may be wrong of course in my reading of the proposal, and I should perhaps defer to legal gentlemen on the point. But I think that laymen are sometimes a little too mealy-mouthed, and pay altogether too much deference to the opinions of legal gentlemen, who take part in debates in this Chamber. 1 will not calmly sit by and allow the opinions -expressed by legal gentlemen to weigh with me when I think 'an interference should be made. I think an interference should be made here, and I think that if Senator O'Connor will extend the publication of the notification to one or two newspapers in the district in which land is sought to be acquired, the whole case will be met. To say, as would be required if Senator Harney's amendment were adopted, that not only the owner but every single person having an interest in the land should be notified, is asking too much. IE the Government advertised in the Gazette and in one or two local newspapers the purpose in view would be served.

Senator PLAYFORD

(South Australia).'- I have been trying to find out what reason there is for departing from the old and usual custom of acquiring land for public purposes, and I have failed to find out from the honorable and learned senator in charge of this Bill why the Government have done so. So far as South Australia is concerned, I have acted as chairman of a district council for many years, and have, in that capacity, had to put into operation the Act for making road deviations, &c. In such cases we proceed in a -regular order, which is always followed when land is acquired for public purposes. In the first place we go upon the land and make a plan, showing exactly the property we desire to acquire for our purposes. We give notice to the owner, furnishing him with a copy of the plan referring- to his property. That is only right and just.

Senator Sir Josiah SYMON

- There has never been any difficulty in finding the owner in South Australia.

<page>2492</page>

Senator PLAYFORD

- There has never been any difficulty in any case, because, where neither the owner nor the occupier is upon the land, the law says you shall leave the notice upon the property itself. I do not know what benefit that is, but it is the old English law, and we have never had the slightest trouble in carrying it- out. It appears to me to be absolutely fair, and I do not know why we should depart from so just a practice. Whatever possessed the State of New South Wales to divide their mode of acquiring land into two parts - so that where land is acquired for the purposes of a railway you' are to do certain things, and where you acquire land for other purposes you are only to publish the notice in the GovernmentGazette - I cannot understand. There may be some reason for it which I have failed to appreciate. It appears to me, however, that the common practice that has been resorted to for so many years is fair, right, and proper,

and that we should continue to follow it. Property is to be taken for all kinds of purposes under this Bill. There is power to go underground and not pay compensation unless the surface is injured. I think we should simplify clause 6 by a preliminary statement to the effect that there shall be prepared plans showing exactly what land is to be taken. We should also serve notices on the people affected, and serve a copy of the plans and specifications of the land we intend to take. I do not know why the Government are opposing this amendment. It would not put much trouble in their way, because where the owner cannot be found you have not to serve the notice upon him. To bury the notice in the Gazette, however, is a mistake. Another thing I cannot understand is why there is no provision that you have to lay the Gazette before Parliament.

The CHAIRMAN

- That is not dealt with in this clause.

Senator PLAYFORD

- But it is part of the subject connected with the clause. The thought that came into my mind when I saw this provision was "Does that mean that any Ministry is going to take upon itself, without the authority of Parliament, to take people's land from them " 1

Senator O'CONNOR

- I submit that the honorable senator is not in order in dealing with that subject, which is concerned in a clause we have passed.

The CHAIRMAN. - The honorable senator is out of order in discussing a matter foreign to the clause under notice.

Senator PLAYFORD

- I admit that the subject is foreign to the clause, and I beg pardon if I have trespassed a little bit. All I ask is that the honorable and learned senator should reconsider the question, and see if he cannot meet Senator Harney in the matter. It is only asking what is just and fair, and what we should like to have meted out to us if we were the owners of land, and were out of the country at the time the Government desired to acquire it.

Senator MCGREGOR

- I join with Senator Playford in asking Senator O'Connor to accept the amendment. It can do no harm. If the owner of a property is dead, or gone to Jericho or anywhere else, it will not be possible to serve him with a notice, and in that case, of course, it would not be done. It seems strange that we pay such high salaries to the officers of the departments and then by enactments of this kind try to keep them clear of all the work we can. If this amendment is inserted in the Bill- it will go far to satisfy Senator Stewart and other honorable senators as to the work some of the highly-paid officers will have to do.

Senator O'CONNOR

- This is not a question of the amount of work that would be involved in carrying out the amendment, but of the difficulties that will be placed in the way of the speedy settlement of the matter of compensation.

Senator Sir Frederick Sargood

- There has never been delay.

Senator O'CONNOR

- I might retort that there has never been a complaint in New South Wales that any hardship has resulted under the system proposed by this Bill, nor has there been any complaint in Tasmania, where Senator Dobson tells us the same system has been adopted. The real fact of the matter is that the number of cases in which it is likely that this clause will operate is very small. In the great bulk of the cases the owner is known, and will be aware that it is intended to take his land ; and, inasmuch as it is necessary to give a full description of the land in the notification, inquiries will have to be made as to the owners and as to everything else connected with the property.

Senator Sir JOSIAH SYMON

- So that there will be no difficulty about giving notice.

Senator O'CONNOR

- It is only in cases where you cannot find the owner, and do not know where he is, that this provision will apply.

Senator McGregor

- Then you cannot serve the notice.

<page>2493</page>

Senator O'CONNOR

- Suppose we come to a case where notice has been served. The service of the notice is of very little value unless you serve every person interested, because every one interested is . entitled to put in a claim for compensation. If you know who are the persons who are interested, or if you can by diligent inquiry find out who they are, you are bound to serve every one of them with a notice. You have not only 'to serve the original owner, but if the original owner is dead, and dies intestate-

Senator McGregor

- You will not serve him !

Senator O'CONNOR

- There might be difficulty in finding where he is.

Senator Sir Josiah Symon

- Perhaps the Government would not like to go where he was !

Senator O'CONNOR

- If the owner were dead he would probably have left a number of persons who would be interested in the property. It would be necessary to find his next of kin. All those inquiries would have to be made. When the persons interested were found, every one of them would have to be served. It is idle to say that all you have to show is that diligent inquiry has been made, and that if you cannot discover the persons by . diligent inquiry, you are relieved from serving them ; but that if you can discover them you are bound to do so. It will involve in every one of these cases an inquiry as to who are the persons interested. In many cases this inquiry would take up no time at all, but in many other cases a great deal of delay may be caused. If by the word "owner" is meant simply the occupier of the land, is it fair to give the occupier an advantage in making his claim whilst you give the persons who have interests which may be equally great no opportunity of coming in to make their claims'? From the time the owner himself makes a claim there will be a number of persons interested. There is not only the original freehold owner but there are other persons.

Senator Harney

- May I suggest that all that investigation would have to be made at some time before the Government could part with the money. Why not make it before the land is taken over 1

Senator O'CONNOR

- When the matter is being Settled, if all claims have not been made, the Government simply pays the money into the bank. The value of the land has been ascertained, and you simply wait for the persons to claim the money according to the proportions to which they are entitled. You cannot get to the question of determining the compensation until all those persons have sent in their claims.

Senator Sir Frederick Sargood

- The Government will be saving interest all that time, so that it will not suffer.

Senator O'CONNOR

- But you cannot get the matter closed up as it should be.

Senator Harney

- Is not the point the speedy acquisition, not the payment of compensation 1

Senator O'CONNOR

- That is one point, but the great point is to know what the public has .to pay. You cannot do that while these questions of compensation are hung up, and while all these inquiries have to be made. Senator Playford has asked - " Why should we not proceed in the way we have been accustomed to proceed, in South Australia " ! " The honorable senator speaks of his own experience. In the other States a different system has been pursued. In Tasmania and New South Wales where land is required for public purposes the procedure laid down in this Bill is followed. The question is whether any injustice occurs under it. On the other-hand it is speedy, and it enables the matter to be settled, promptly. For these reasons, I think, there is no ground for accepting the amendment.

Senator Sir JOSIAH

SYMON (South Australia). - -I really think my honorable and learned friend,

Senator O'Connor,

has been spinning a great many cobwebs, which really have no practical bearing upon the point. The

difficulties about the persons interested have been successfully encountered and dealt with for 60 years under the Lands Clauses Consolidation Act. They have been met by municipal bodies in regard to the roads within their authority.

Senator O'Connor

- Under very different circumstances.

Senator Sir JOSIAH SYMON

- Under the same circumstances, except that this Bill is going to arrogate to the Commonwealth the power to take a man's property behind his back, which is not the course followed in any civilized country except, perhaps, New South Wales.

Senator O'Connor

- - Does not the honorable and learned senator call Tasmania civilized ?

Senator Sir JOSIAH SYMON

- Tasmania has been led astray by New South Wales.

<page>2494</page>

Senator Dobson

- The power has been utilized only in Tasmania for taking small strips of land for purposes of roads.

Senator Sir JOSIAH SYMON

- -The objection in regard to compensation seems to me, on reference to clause 14, to be a perfect myth. The amendment will not delay the ascertainment of compensation for one hour. The time when compensation is to be considered, is after service of notice of claim by the claimant.

Senator O'Connor

- The notice of claim does not operate until after a certain date after the service of notice of resumption.

Senator Sir JOSIAH SYMON

- After the Gazette notice.

Senator O'Connor

- That is as the Bill stands now. I am speaking of the amendment. » Senator Sir JOSIAH SYMON.- I am not wedded to the words of the amendment. I think it should be modified, because our desire is to facilitate the operations of -the Government in acquiring land, so long as justice and fair play are meted out to the owners of the property. As it stands now, the notice has to be given in the Government Gazette. I do not propose that the provisions for the acquisition of land should be altered in any way. The land should be acquired as is now provided. The period seems to be rather short. It should be- acquired ipso facto, on the expiration of a certain period after the publication of the notice. But what I say is that the Government should not penalize the owner who is enjoying the great privilege of his property being taken from him compulsorily, by making him pay the costs for an extension of time for putting in his claim, simply because he has not seen the Gazette notice. That is a view which seems to me to be worthy of being fairly considered by the Government. The amendment requires a little modification, but I am sure that Senator O'Connor will have the assistance of every senator in making it effective. All we desire is that an effort shall be made to notify the owner. If he is known, as he will be in the great bulk of cases, no difficulty arises. Not only is he generally known but he is treated with beforehand. He is negotiated with. We know that it is so. We know that cases that come up for settlement compulsorily, by arbitration or otherwise, are few and far between. If, in the bulk of cases, settlement is made without arbitration, then, in the bulk of cases, there will be no difficulty. Therefore, I join with Senator Playford in appealing to my honorable and learned friend. I am sure he will have the assistance of every honorable senator in giving this fair play to the owners of the land. It will do no harm to the State, and at the same time it will secure the same expedition as there will be now in the acquisition of property.

Senator O'CONNOR

- My great objection to the honorable and learned senator's amendment is that it will lead to delay, because it will be necessary to serve these notices on so many people, and to make so many inquiries in order to serve them. If the amendment were restricted to serving notice on the occupier, or if he could not be found, to posting it up on the land, that would be a very different matter.

Senator Harney

- Serve the notice on the owner.

Senator O'CONNOR

- That is a different matter. It means making inquiries as to where the owner is and who he is. If the honorable and learned senator will restrict it to posting notice on the land-

Senator Sir Frederick Sargood

- But the Government must find the owner before they can compensate him.

<page>2495</page>

Senator O'CONNOR

- They compensate him after he makes a claim. If all that is asked is that the notice shall be served either on the owner or occupier, I shall be perfectly prepared to amend the clause in that way.

Senator HARNEY

(Western Australia). - I really think my objection to the proposal is not only one of expediency but one of principle.

Senator O'Connor

says the Government will take the land and substitute for it a certain amount of money, and that it will hold that money until the owner turns up. I think that principle is wrong. If you are taking 'a property from any one, it lies upon you to find out who he is, and to find out to how much he is entitled. It is quite reversing the order of things to say that we will convert 1,000 broad acres into £5,000, and allow the money to remain in our hands till the owner comes up. I have been unable to see the difficulty pointed out by

Senator O'Connor.

I do not want to reiterate the argument, but what has been done since 1845 in England cannot be too much to expect in Australia. We have our Torrens Act here, and in 99 cases out of 100 we can find out the owner of a piece of land by simply paying a visit to the Titles-office. It is not expecting too much to ask the Australian Government officials to pay a visit to one building, when the English people have to pay a visit to a hundred places perhaps, in order to find out the same thing.

Senator O'Connor

- Would not service on the registered proprietor do ?

Senator Major Gould

- But where land is not under the Real Property Act, as in the case of some of the States, how would it work ?

Senator O'Connor

- Then on the occupier ?

Senator HARNEY

- But the definition of the word " owner," given in the Bill, is that it includes with respect to land any person who, under this Act is enabled to sell or convey land.

Senator STEWART

- I intend to support the Government in this matter. It may appear to some honorable senators that this is a very revolutionary process which is contained in the Bill, and that it is a most serious attack upon the rights and privileges of property. In my opinion property has its responsibilities, as well as its rights. As I understand the matter, Senator Harney is claiming consideration for the absentee proprietor, or for the proprietor who cannot be found.

Senator Sir Josiah Symon

- No; he is shutting him out from consideration. He says he shall not be served if he cannot be found.

Senator STEWART

- If the man cannot be found, how is the notice to be served upon him. I do not think the progress of public works should be obstructed because a man cannot be found.

Senator Harney

- But the works can go on.

Senator STEWART

- Then what is all the trouble about? This shows the danger of a layman intruding himself into a dispute between lawyers. I have attempted to navigate my little vessel through these breakers, but I find it speedily foundering.

Senator O'Connor

- The honorable senator is quite right.

Senator STEWART

- I am quite right, I suppose, as long as I support the honorable gentleman. There appears to me to be a principle underlying this sort of thing. Many people buy land and never look at it again. They throw every obstruction they can in the way of the local authorities. They do not pay any rates.

Senator Playford

- But if they do not pay any rates their land can be taken.

Senator STEWART

- I know of properties in Queensland upon which no rates have been paid for 30 years.

Senator Glassey

- The municipal authorities can take possession in such an event after a certain period has elapsed.

Senator STEWART

- These people are obstructing the progress of the community by their absence and inattention to their property, and I do not think that anything that permits that sort of thing to go on should be encouraged. If the proposal in the Bill strikes a blow at that sort of thing, however feeble, I shall support it.

Postmaster-General

Senator DRAKE

- It would be an advantage if those honorable senators who are not in accord with Senator O'Connor would come into line on this subject. In that case we should perhaps get a little nearer to a solution of the difficulty. At the present time an amendment has been proposed, and it has been supported by honorable senators who do not agree with it: and yet, when we come to close quarters, we find that those honorable senators who are opposing the Government are not in accord as to what they want. If it were a matter of giving notice to the registered proprietor it would be simple enough. As soon as that proposition is made, however, another honorable senator gets up and says he is not satisfied; he wants notice to be given to the owner. Then another honorable gentleman is not satisfied with that, and demands that notice should be given to every person connected with the land.

Senator Walker

- I think that service on the registered proprietor would do very well.

Senator DRAKE

- There would be no difficulty in finding out who is the registered proprietor. Under our system of registration in Queensland, there would be no difficulty about that whatever; but that proposal does not satisfy some honorable senators.

Senator PLAYFORD

- A reasonable man would be satisfied.

Senator DRAKE

- The terms of the amendment are that every one interested is to get notice.

Senator Playford

- But that has been abandoned.

<page>2496</page>

Senator DRAKE

- It is quite right that it should be abandoned, because if we put it into the Bill, it would leave the way open to a great many claims being made by people who might say they were interested, and had not received notice. I do not think it would be a good thing to have notices posted upon the land. That practice has been tried in Queensland, but no one takes any notice of it.

Senator Sir FREDERICK Sargood

- It has been adopted with advantage in "Victoria."

Senator DRAKE

- It is an advantage to this extent, that it is a requirement put into an Act, and no action can be taken until the Act has been complied with in that respect; but I think it gives no notice to either the owner or the occupier.

Senator Sir Frederick Sargood

- I have known instances where the owners of property have been found by this means.

Senator DRAKE

- Probably someone saw the notice, and informed the owner. In the same way, a person might see in the

Gazette the notice with which we are dealing, and tell the owner of the property in question.

Senator O'Connor

- Or we might serve notice on a missing friends office.

Senator DRAKE

- There could be no objection to serving notice on the registered proprietor, provided it did not cause delay, because it is certainly desirable that we should know as early as possible how much is to be paid for the land to be acquired. It might be that the Government would propose to carry out certain public works, and that it would require to know what compensation it had to pay before proceeding in the matter. I have not heard any amendment yet which embodies the view that I understand some senators are in favour of adopting.

The CHAIRMAN

- The amendment before the Chair is to strike out the word " publication," and to substitute the word " service."

Senator DRAKE

- Yes ; that amendment has been moved as a test. I think there should be a clear understanding arrived at as to what honorable senators desire, so that we shall know if that amendment is carried what is to be embodied in the Bill.

Senator HARNEY

(Western Australia). - I would not be willing to depart from the use of the words "owner or owners," because they are used in the Lund Clauses Consolidation Act, in reference to which there are so many decisions to guide us. If we use the words " registered proprietor, " we leave dealt with that considerable portion of land which is under the old system.

Senator O'Connor

- But we could provide specially for that.

Senator HARNEY

- I am perfectly willing that certain portions should be left. For instance, ' we do not want the reference to "diligent inquiry," but notice should be sent to the owners by registered letter. .

Senator Drake

- How are we to find the owners 1

Senator HARNEY

- That is the business of the Government. All that this requires of the Government is, to do what is done in England under more difficult circumstances - to make a bona fide attempt to find out the persons interested.

Senator Sir JOSIAH

SYMON (South Australia). - We cannot very well satisfactorily settle amendments of this description in the midst of a discussion. Although we have been debating clause 6, the discussion has been upon a verbal amendment of clause 12. The better way, perhaps, would be for the House to resume, and between now and the next meeting of the Senate, the matter could be carefully considered with a view of arriving at a settlement. I am sure

Senator O'Connor

will believe me when I say that there is no desire to throw any difficulty in the way of the Government as long as we have fair play dealt out to the owners.

Senator HARNEY

- I have not an inch of land, so that I am absolutely disinterested.

Senator O'CONNOR

- Then the honorable and learned senator is a lucky man !

Senator Sir JOSIAH SYMON

-The Postmaster-General must be mistaken in saying that this proposal would delay the acquisition of land or the ascertainment of the compensation to be paid, because the land is acquired before the claim for compensation is put in. The land is acquired under clause 6, and the Commonwealth will determine to acquire it before publication is made, so that the giving of these notices does not interfere with the assessment of compensation by the Government according to their view of the matter.

Senator O'CONNOR

- I have no objection to reporting progress. Perhaps it would be well for my honorable friends to settle among themselves the exact terms of the amendment they desire. I have a strong opinion on the matter myself, but I promise that in the meantime I shall give consideration to what has been said.

Progress reported.

<page>2497</page>

15:57:00

Senate adjourned at 3.57 p.m.