

<url>https://www.historichansard.net/senate/1901/19010619_senate_1_1</url>

1901-06-19

Senate.

The PRESIDENT i took the chair at 2.30 p.m.

QUESTIONS

COMMONWEALTH GOVERNMENT LOANS

Senator WALKER

asked the Postmaster-General, in the absence of the Vice-President of the Executive Council, upon notice -

If not already done, is it the intention of the Government to take the needful steps to have the Commonwealth Government Loans included in "Trustees' Securities" in the United Kingdom, thereby securing a higher price for them than if not so included ?

Postmaster-General

Senator DRAKE

- Yes.

COLLECTION OF DUTIES

Senator WALKER

in the absence and at the request of Senator Pulsford, asked the representative of the Government, upon notice -

Will the Government state whether under the words "imposition of uniform duties," in sections 00 and 92 of the Constitution Act, they intend to collect the proposed new duties from the time the proposed new Tariff is laid before the House of Representatives, or what other course they will adopt ?

Senator DRAKE

- The Government does not consider that the information should be given at the present stage.

ASKING OF QUESTIONS

Senator PEARCE

- On behalf of Senator Staniforth Smith I beg to ask the question standing in his name.

The PRESIDENT

- Has the honourable senator been requested to do so ?

Senator PEARCE

- No.

The PRESIDENT

- Without such a request a question ought not to be asked.

ROTATION OF SENATORS

Senator WALKER

in the absence and at the request of Senator Pulsford, asked the representative of the Government, upon notice -

In view of the fact that section 13 of the Constitution Act provides that the question of the rotation of senators shall be settled "as soon as may be after the Senate first meets," and that the Senate has already been in session for a month, will the Government forthwith fix a day for dealing with the subject during next week?

Senator DRAKE

- This matter will be dealt with during the first week of July.

POST AND TELEGRAPH BILL

Instruction to Committee.

Postmaster-General

Senator DRAKE

. - I move -

That it be an instruction to the committee on the Post and Telegraph Bill that they have leave to amend the enacting words of the Bill by leaving out "Parliament," and inserting in lieu thereof "King's Most Excellent Majesty and the Senate and the House of Representatives."

<page>1192</page>

Senator Sir FREDERICK SARGOOD

- May I ask the Postmaster-General the reason for this departure from the ordinary form of enactment 1 It is a departure from the practice in Victoria and, I believe I am right in saying, -from the practice in the House of Commons. I think he will find that the usual wording is -

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of -

Those words, as well as the words " in the present Parliament assembled, and by the authority of the same," have been left out. There may probably be some very good reason for the omission ; but, before making such a departure, I think it will be well for the Senate to be apprised of the object.

Senator DRAKE

- The only explanation I can give to the honorable senator is that in adopting that form in the enacting clause of the Bill we are following the first section of chapter I. of the Commonwealth of Australia Constitution Act. "We cannot be said on this occasion to be departing from any precedent because there is no precedent. This is the first Bill which has been brought forward in the Senate. The first section of chapter I. of the Constitution Act says the Parliament shall consist of the Queen, a Senate, and a House of Representatives. I think it is the correct course, having in view that section of the Constitution, that we should adopt the form of the enacting words which I now propose.

Senator PLAYFORD

- It is very important that the enacting clause of all the Bills we pass should be uniform. The Postmaster-General, in stating that we are following the enacting section of the Commonwealth of Australia Constitution Act, has fallen into a mistake, because that section states -

Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Lords, spiritual and temporal, and Commons in Parliament assembled, and by the authority of the same, as follows : -

Senator Drake

- I was not speaking of the covering section, I was speaking of the first section of the Constitution itself. ,
Senator PLAYFORD

- Yes; but the enacting section is couched in the words I have read. The point I wish to make, in the first place, is that all our Bills should contain the same form of enacting clause. In South Australia we had an enacting clause which used to read -

Be it enacted by the advice and consent of the Legislative Council and the House of Assembly of South Australia. *

After a considerable amount of discussion we made the enacting clause as simple as we possibly could. There was trouble between the two Houses as to which House should be recited first. The House of Assembly, so far as Money Bills were concerned, undoubtedly thought that it should take precedence over the Legislative Council, and so, to get rid of the difficulty, the Right Honorable Charles Cameron Kingston, altered the form, and we have the most simple enacting clause which it is possible to conceive. It has been followed in the drafting of this Post and Telegraph Bill. We say -

Be it enacted by the Governor, with the advice and consent of the Parliament of South Australia, as follows : -

We do not allude to the Legislative Council or to the House of Assembly. We do not give precedence to one House by mentioning the name of one before that of the other, and the draftsman of this Bill has exactly followed the form of our enacting clause. The Bill says-

Be it enacted by the Parliament of the Commonwealth of Australia as follows : -

I contend that that form is the correct one to adopt, and if honorable senators have noticed what has occurred in another place they will have seen that in an Appropriation Bill which provides for services up to a certain date of this year, the House of Representatives 'have added words in which they claim precedence over the Senate. It is a great deal better to prevent any trouble occurring between the two Houses, and therefore it is quite sufficient to use the enacting form in this Bill. I shall certainly oppose the addition of the words to be proposed by the Postmaster-General. It will be a great deal better for us to follow the exceedingly simple form used in South Australia. We can leave out the words . " the advice and consent " of the two Houses, and " the authority of the same as follows." This form is suitable to the work we have to perform, and there is not the slightest necessity for us to have a more elaborate enacting clause.

<page>1193</page>

Senator MCGREGOR

- I sincerely hope that the Senate will adhere to the form of the enacting clause in the Bill. I cannot understand why this change is being made at the present time. Has the idea got into the heads of some persons that Australians are going to be less loyal than they have been?

Senator Drake

- No ; there is no suggestion of anything of the kind.

Senator MCGREGOR

- Or is it the idea that they will not be able to waste enough of printers' ink or something of that description? Or do they want to adopt the same forms as the legal profession generally do - to put as many words as possible into anything so as to increase the cost ? I cannot understand why even the Government take up this idea. Nor can I understand the anxiety of Senator Drake in endeavouring to make this clause more complicated than it is. The first section of the Constitution is really a definition of what the Parliament is, and when we say " the Parliament of the Commonwealth," either we mean the King, the Senate, and the House of Representatives, or we mean the King, the House of Representatives, and the Senate. I agree entirely with Senator Playford that if we leave the form of the clause as it is, no possible conflict can arise between the two Houses as to which of them should be mentioned first. And as so many thin skinned persons have got into the position of senators. or representatives, we should be as guarded as possible, and give as little cause of offence as lies in our power.

Senator Sir JOHN DOWNER

- Some amendment is necessary. I do not think the words " the Parliament of the Commonwealth " are enough in themselves, because they assume that the Parliament of the Commonwealth is omnipotent, whereas, of course, we know it is not. It is simply an assumption of authority which we in no way possess, and which I should think we in no way wish to assert. It seems to me that the motion of the Postmaster-General puts the proposition in very terse terms. He might have said "the King's Most Excellent Majesty and the Parliament of the Commonwealth."

Senator Sir Josiah Symon

- That would be wrong, because the King is part of the Parliament. If we use the word Parliament, it includes the three.

Senator Sir JOHN DOWNER

- I do not agree with my honorable and learned friend in the slightest degree. " The Parliament" does not include the King.

Senator Sir Josiah Symon

- Oh yes, it is defined in the Constitution.

Senator Sir JOHN DOWNER

- -Yes, so far as the Constitution Act is concerned it is defined, but then if we go to the Constitution Act we want no words at all. It appears to me that the words proposed by the Postmaster-General are as simple and expressive as words can be.

Senator McGregor

- Nevertheless, more over, notwithstanding.

Senator Sir JOHN DOWNER

- The honorable senators who object to those words really and truly object to them, because they do not like the notion of any power having authority except themselves.

Senator McGregor

- What nonsense.

Senator Sir JOHN DOWNER

- I ask Senator McGregor if that is not so 1

Senator McGregor

- No.

Senator Sir JOHN DOWNER

- There is a full recognition then of the power of the King.

Senator McGregor

- Certainly. No Bill can become an Act without his assent.

Senator Sir JOHN DOWNER

- Exactly. I am glad I asked the question, because I have the assurance of the honorable senator that he intended-

Senator Sir Josiah Symon

- The honorable and learned Senator may go on now with perfect confidence.

Senator Sir JOHN DOWNER

- Now we are all agreed.

Senator Stewart

- We are awfully loyal, to Australia,

Senator Sir JOHN DOWNER

-I think we are all loyal to Australia. But I think we are all loyal to more than Australia. At any rate I hope that our loyalty does not begin and end in Australia. Our loyalty I think is something beyond our own particular sphere. It seems to me that the words proposed are unobjectionable and are necessary.

<page>1194</page>

Senator Sir JOSIAH SYMON

- I think we all feel indebted to you, Mr. President, for, on more than one occasion, keeping us alert to constitutional matters that require adjustment if we are to proceed on right lines, particularly in connexion with the Senate which is a new House, constituted on a new basis, and exercising functions which have not hitherto been associated with the ordinary Upper House to which we have been accustomed. It is not likely to be of great service to a debate on a matter of this kind, that my honorable friend Senator McGregor's exquisite powers of sarcasm should be used in referring to honorable members of this or any other House as "thin-skinned persons." I do not know whether my honorable friend's skin is of the rhinoceros type, but I think remarks of that kind would be very much better omitted when we are discussing constitutional matters which may be of more or less importance. Senator Sir John Downer seemed to think that I was in error - because it is not likely that he would be in error on a matter of this kind - but the English Constitution, as I have always understood it, recognises it as a principle that "the Parliament," however we may phrase it, does include the Sovereign as well as the two Houses. We have also in our Constitution a legal recognition of that constitutional principle in terms beyond mistake. Section 1 of chapter 1, dealing with the Parliament, expressly says that the legislative power of the Commonwealth shall be vested in the Federal Parliament, which shall consist of the Queen, a Senate, and the House of Representatives. Now, I think that my honorable friend - and this is an Act containing a great many Sections, so that none of us can afford to speak with too great confidence about it without reference - must have overlooked that provision when he doubted whether, as far as the Constitution is concerned, the Sovereign did form part of the Parliament. I venture to think also that Senator Playford took a rather mistaken view on this point, because of course the power of enactment under the English Constitution - I think the President will bear me out in that - is supposed, under the time honoured constitutional rules, to be vested in the Sovereign. The Sovereign legislates but "with the advice and consent of the Lords spiritual and temporal and the Commons in Parliament assembled." But the legislative power is vested theoretically at least in the Sovereign.' On the other hand, here the legislative power is vested in "the Parliament," which, by definition in our Constitution, includes the Sovereign and the two Houses. The question, then, is simply whether we are to use in the clause under discussion the term defined - and which for shortness cannot be surpassed - in the section of the Constitution which I have taken the liberty of reading to the Senate. The question is whether the words -
Be it enacted by the Parliament of the Commonwealth of Australia are amply sufficient, or whether discarding the expression, "The Parliament," which is defined in the Constitution as consisting of "the Queen, the Senate, and the House of Representatives," we shall use the larger expression which the words, "The Parliament," cover.

Senator Best

- They are both right, though.

Senator Sir JOSIAH SYMON

- They are both right. But "The Parliament" has the advantage of shortness, and the advantage of being clearly defined in the section of the Constitution. Therefore,, so far as individual preference is concerned, I should prefer to adhere to the enacting clause as it stands in the Bill, and to always preserve it. I think it

is neater, it is constitutionally accurate, it is free from all doubt because the Constitution itself has defined it, and we cannot go to a better authority than the Constitution, which has been framed in order to secure brevity. So> that if we use the expression " The Parliament," we get brevity, we get lucidity, and if we have any doubt at all as to what is comprehended in it, we have it fully explained in section 1. It would be well to have uniformity, as Senator Playford said,, but that uniformity should be in the direction adopted in the Bill.

Senator WALKER

- From the eloquent explanation which we have heard from Senator Sir Josiah Symon, it seems that it is perfectly permissible to» use either expression. It appears to me that it would be much better on this occasion to accept the proposal of the Government.. Unfortunately there are not a few persons in Australia who would take advantage of any opportunity 'to say that Parliament was all powerful, without reference to the King's Most Excellent Majesty. On. that ground and because we should take every occasion to show that we are part of the British 'Empire, I shall support the Postmaster-General.

<page>1195</page>

Senator STEWART

- I am. inclined to think that the particular clause under discussion ought to stand as it appears. I had not the advantage of being; present when the Postmaster-General gave his reasons for the proposed alteration, but as far as I can see, it is not possible to give, any valid reason for that alteration. Our ideas with regard to Acts of Parliament;, are that they ought to be expressed in as. clear English as possible, and with as. little redundancy as possible. If that be the case, the phrase, " Be it enacted by the- Parliament of the Commonwealth of Australia " appears to me to be as expressive as and to be much more concise than the alteration proposed by. the Postmaster-General. If we adopt the amendment I consider that we shall be taking a step in the wrong direction, and instead of shortening our Acts, and of making them clearer, we shall be needlessly dragging them out and making them- more and more involved. With regard to the question raised by Senator Sir John Downer, and I think also by Senator Walker - although I could not catch exactly what the latter honorable senator said - there appears to be some little doubt in the minds of certain gentlemen as to the loyalty of Australia to Great Britain. I think we may set honorable senators' minds at ease on that point. We are all loyal to Great Britain, I hope. AVe are all loyal also to Australia, but I think we owe some little loyalty to ourselves. AVe ought to ask ourselves this question - " Who is it that governs Australia? Is it the people of Australia, or is it some power outside of Australia 1" That is the question that we have to ask ourselves. With regard to the position of the King in the Government of Great Britain, that has been defined by Senator Sir Josiah Symon, but I suppose that senators know just as well as I do that any interference on the part of the King with legislation passed by the British Parliament would be resented by the people of Great Britain, and would not be permitted. The power to veto is a fiction, and it is permitted to exist only because it is never used. Do honorable senators riot know that ? Do they not also know that if any power outside of Australia attempted to interfere in the internal affairs of Australia, that that action would also be resented ? It would be resented hy me, at any rate, and I trust it would be resented by every honorable member of the 'Senate. AVe are a self-governing community in every sense of the word.

Senator Dobson

- Under the Crown?

Senator STEWART

- Under the Crown, certain] jr. But the Crown with regard to Australia is as much a fiction as it is with regard to Great Britain itself. The Crown is only permitted to exist on the express condition that it never exercises its power.

The PRESIDENT

- I think the honorable senator is going a little beyond the question. It is only a question as to whether we use the words "the Parliament" or "the King, the Senate, and the House of Representatives. "

Senator STEWART

- With all due respect I submit that Senator Sir John Downer raised this very question which I am now discussing. All I am attempting to1 do is to place clearly before the Senate the position of the Crown with regard to Australia and the United Kingdom which has been dragged into 'this discussion. The Crown has no power - -the Crown is merely a figurehead. The only condition upon . which it is allowed to exist is that

it does not use any power, and that it simply sets its seal upon "whatever Parliament enacts.

Senator Best

- The Crown is the creation of Parliament.

Senator STEWART

- The Crown is the creation of Parliament, but the Crown has no real legislative power. Of course, if . honorable senators cannot differentiate between nominal and real legislative power that is not my fault. The Crown has no real power.

The PRESIDENT

- Does the honorable senator think that that has anything to do with this question, which is merely one of wording 1

Senator STEWART

- Other senators were permitted to refer to this, Mr. President.

The PRESIDENT

- I did not hear any other senator.

Senator STEWART

- I think in the interests of brevity that this alteration is quite unnecessary.

Senator Higgs

- AVe had better put in the names of the senators and of the members of the House of Representatives.

Senator STEWART

- I * shall certainly oppose the motion.

Senator BEST

-I do not know that there is anything really very substantial between the words proposed to be substituted and those which already appear in the Bill. If we want to be slavishly accurate so far as the terms of the Constitution Act are concerned, then instead of using the words " The Parliament of the Commonwealth," we should use the words " The Federal Parliament."

Senator Sir Josiah Symon

- No.

<page>1196</page>

Senator BEST

- If my honorable and learned friend will pardon me, I will show him why it is so. Either the words " the Federal Parliament " or " the King's

Most Excellent Majesty and the Senate and the House of Representatives " should be used.

Senator Sir Josiah Symon

- But there is a short definition by which it is hereafter called " the Parliament of the Commonwealth."

Senator BEST

- Will my honorable and learned friend permit me to say, with the greatest respect, that it is not a definition ? Section 1 of chapter I. says -

The legislative power of the Commonwealth shall be vested in the Federal Parliament.

Therefore, the Federal Parliament legislates. It is not necessary at all for the purposes of the Bill to go further than to say - "Be it enacted by the Federal Parliament." If we want to know what the " Federal Parliament" means, we can go to the Constitution Act and there find the definition.

Senator Sir Josiah Symon

- Why cannot we say, "Parliament of the Commonwealth" 1

Senator BEST

- Because that would be inaccurate.

Senator Sir Josiah Symon

- Why so?

Senator BEST

- Because the Constitution Act says that the Parliament shall consist of -

The King, a Senate, and a House of Representatives, and which is hereinafter called the Parliament, or the Parliament of the Commonwealth.

The words "which is hereinafter called" shows that the language used is descriptive. So far as the Constitution Act is concerned " the Parliament" means the Parliament of the Commonwealth. I think my

honorable and learned friend, if he will accurately analyze the words, will find there is no getting away from that proposition.

Senator MCGREGOR

- We are hereinafter calling it "the Parliament of the Commonwealth."

Senator BEST

- It is only when we use the words "the Parliament" in this Act that they mean the Parliament of the Commonwealth ; it is a mere interpretation.

Senator Sir Josiah Symon

- This is the Constitution under which we are acting.

Senator BEST

- I am aware of that. Following slavishly the words of the Constitution, we have either to say " the Federal Parliament," or " the King, the Senate, and the House of Representatives."

Senator Sir Frederick Sargood

- -That is better.

Senator BEST

- No doubt the latter words are the words that are usually adopted by our own Parliaments, and of course by the British Parliament.

Senator Sir Josiah Symon

- They are under a totally different Constitution.

<page>1197</page>

Senator BEST

- I understand that perfectly. The point I am making is that the terms are practically synonymous. We can either use one or the other. No doubt the Postmaster-General was not correct when he inserted the words " the Parliament of the Commonwealth." He really should have inserted the words "the Federal Parliament," or else the words he now proposes to substitute.

Senator EWING

(Western Australia).I can quite understand a layman not grasping the distinction that has been pointed out by

Senator Best,

but I can hardly understand a member of the legal profession being unable to appreciate the distinction, as in my opinion it undoubtedly exists. As

Senator Best

has pointed out, the, definition that is contained in section 1 is a definition for the purposes of the Constitution Act only. If that definition were contained in the measure which we are about to deal with, which defines a number of terms which, whenever they are used, will have the interpretation therein given to them, then no doubt " the Parliament of the Commonwealth" would be sufficient. I think,

Mr. President,

that

Senator Best

is quite right, and that " the Parliament of the Commonwealth" means, nothing, because there is no definition of. the words "the Parliament of the Common* wealth," unless it is used within the four corners of the Act for the purposes of which that definition is given. Therefore, it seems to me quite clear that either the words that have been suggested by the Postmaster-General, ' or the words " the Federal Parliament " should be substituted for the words "the Parliament of the Commonwealth . "

Senator DRAKE

(Queensland - Postmaster-General). - I am very much surprised that so much debate should have arisen on this small matter. The fact of the matter is that a number of Bills have been drafted, and with this one exception the term that has been used is the term that T. propose to introduce now -

The King's Most Excellent Majesty, and the Senate and the House of Representatives of the Commonwealth.

This particular Bill, through an accident, was drafted in a different way, and a different expression used. I found on looking up the matter that it could not be altered in committee, and therefore it was necessary to ask the Senate to make it an instruction to the committee that that alteration should be effected. An

alteration of this kind in the enacting words is generally considered so unimportant that it might almost be made by the Clerk at the table. My friend, Senator Best, is quite right in what he has said in regard to the term "the Federal Parliament." If these words are not to be used, the words "the Federal Parliament" certainly should be. Why should we depart from the form that has always been adopted in every English community of mentioning the reigning monarch in the enacting clause? In Great Britain the words used would, I think, be - "His Most Gracious Majesty by and with the advice of the Lords temporal, the Lords spiritual, and the Commons." That is because under the British Constitution it is a moot point as to whether the Monarch is part of the Parliament. Under our Constitution there is no doubt whatever on the point. In this first section it is made perfectly clear that the King is part of the Parliament. The Parliament consists of the King, the Senate, and House of Representatives, and when we are presenting a Bill for the assent of the Governor-General, as representative of His Majesty here, we are not to be guided by the term that is used as a short definition in our Constitution Act. The Constitution Act simply provides that in that Act the expression "the Parliament," or "the Parliament of the Commonwealth," shall be used throughout as meaning the King and the Senate and the House of Representatives. But when we go to the representative of His Majesty here to present a Bill for his assent, surely it is right that we should follow the British practice of putting in a reference to the King's Most Excellent Majesty, the King being part of the Parliament that enacts the measure. I would draw attention again to this first section of our Constitution Act which says that the legislative power of the Commonwealth - that is the important point - the legislative power of the Commonwealth resides in the King and the Senate and the House of Representatives. I say therefore that the enacting words which I propose to substitute for those in the Bill are exactly accurate and cannot be improved upon. Those who are opposed to the alteration admit that the words are, at all events, as accurate as the others. If so, what remains? There is not the slightest shred of an argument except that the words "the Parliament of the Commonwealth" do not occupy quite as much space as the amended form. Senator Best has shown clearly that the expression "the Parliament of the Commonwealth" is inaccurate. Therefore I can see no reason for objecting to the motion.

Question resolved in the affirmative.

ACTS INTERPRETATION BILL. ,

Bill received from House of Representatives, and (on motion by Senator Drake) read a first time.

SUPPLY BILL (No. 2)

Bill received from House of Representatives, and (on motion by Senator Drake) read a first time.

Motion (by Senator DRAKE) proposed -

That the Bill be printed, and that the second reading stand an order of the day for to-morrow.

Senator Sir JOSIAH SYMON

- On the motion, Mr. President, I should like to ask- you to kindly say what would be the most convenient opportunity of dealing with the preamble to this Bill, which begins by saying -

For the purpose of appropriating a grant made by the House of Representatives.

The PRESIDENT

- That is not a preamble ; it is the enacting clause.

<page>1198</page>

Senator Sir JOSIAH SYMON

- I see that is so - I was misled by an inaccurate marginal note which calls it a preamble. It is really the recital of the enacting clause. This is, of course, a question of the very highest importance, because we are laying down the lines upon these matters of our constitutional procedure. Everything is new, and it is possible that some considerable discussion may be raised as to the introduction of these words, looking at the powers of the Senate under the Constitution. The earliest moment available should be set apart to most effectually deal with it. I ask, for our guidance, whether it would be better to deal with it on the second reading or by an instruction when going into committee, or whether it could be sufficiently dealt with in committee.

The PRESIDENT

- I do not think the committee can deal with it without an instruction. I think the same course should be adopted as we followed in connexion with the Post and Telegraph Bill. It is a well-understood rule of Parliament that a committee can only act within the powers delegated to it, and the enacting part of a Bill

is not delegated to it. instructions will, therefore, have to be given to the committee to deal with it.

Senator PLAYFORD

(South Australia). I remember that when we went through Bills in the Parliament of South Australia the question that the preamble should stand as printed was always put last.

The PRESIDENT

- This is not a preamble ; there is no preamble to this Bill at all.

Senator Sir Josiah Symon

- It is a recital.

Senator EWING

- It is my desire, Mr. President, to speak to a question of privilege. This Bill has been read a first time, and consequently is in the hands of the Senate.

The PRESIDENT

- Is the honorable and learned senator speaking to the motion ?

Senator EWING

- I rise to speak to a question of privilege.

The PRESIDENT

- Then the honorable and learned senator should state what the question of privilege is, and announce what is the motion he desires to move.

Senator EWING

- The Bill itself encroaches on the privileges and the rights of the Senate. It contains a clause which, in my humble opinion, is distinctly contrary to the provisions of the Constitution, and it contains items which should not be set forth in a Bill of the kind. In other words, the power of the Senate to amend those items is taken away by their inclusion in an Appropriation Bill, which, speaking generally, the Senate has no power to amend. The motion I propose to move is -

That the Senate is of opinion that the inclusion of such items as those set out in the first item of division 22 of the Schedule to the Appropriation Bill is contrary to the provisions of the Commonwealth Constitution.

Senator Drake

- I rise to a point of order. I point out that at the present time we have not this Bill before us. A motion has been carried that it be read a first time, and the present motion is that it be printed. Printing involves circulation. If my point of order is not a good one, I would suggest that it is highly inconvenient to be called upon to discuss a Bill that is not before us.

Senator EWING

- I have no desire to do anything that is in any way inconvenient either to the Postmaster-General or any one else. But I could not see how this question could be raised except as a matter of privilege. No doubt we might throw out the Bill altogether ; but we do not desire to do that, seeing that this is the first Bill of the kind to be introduced into the Parliament of the Commonwealth. All that my motion is intended to do is to place on record the fact that, though we allow the Government to pass a Bill which contains, in our opinion, what it ought not to contain, we do not commit ourselves to the precedent in any way. That is the sole object of the motion, and I have mentioned it now in order that my right of moving it as a matter of privilege may be established. I understand that if one desires to move on a question of privilege, it must be done immediately the question arises. Consequently, immediately the Minister put the Bill on the table, I rose to protest against provisions which, in my opinion, should not be in it. So long as my right is preserved, I am quite prepared to allow the motion to stand over until such time as the Government have time to consider it, and the Senate has time to look into the matter.

Senator Sir JOSIAH

SYMON (South Australia). - Might I suggest that my honorable friend has raised a question of privilege for our consideration, and that as he cannot deal with it except now, when it suddenly arises, he should give notice of motion. If you concur with my view of the matter he could give notice for to-morrow.

The PRESIDENT

- The time for giving notice has passed.

<page>1199</page>

Senator Sir JOSIAH SYMON

- Perhaps by permission of the Senate notice could be given. It is not a question that so much concerns the Government as it concerns the right of the Chamber itself. I would ask you, sir, to consider, if you would, whether the clause containing the words " for the purpose of appropriating a grant made by the House of Representatives " is not in substance a preamble I do not ask for any ruling now, but I would like you to consider the point.

The PRESIDENT

- The position is this. Senator Drake moved that the Bill be printed and the second reading be made an order of the day for to-morrow. Before that was put, Senator Ewing rose to speak to a question of privilege, and he was perfectly justified in so doing. If it is a question of privilege, Senator Ewing was quite right in raising it at once, because, in order to give him the right to move a motion, without notice, the question must suddenly arise. He stated that it has arisen by the laying of this Bill on the table. I would suggest that it would be more convenient if he brought this matter forward to-morrow. I think the Senate will concur that although perhaps it might not be strictly correct to say that the matter suddenly arises tomorrow, still having brought it forward now he has preserved his right and might be allowed to bring it forward "to-morrow.

Senator EWING

(Western Australia). - Would the position be met by my giving notice of this motion on the understanding that it be taken before the Bill is dealt with ?

The PRESIDENT

- By leave of the Senate.

Senator EWING

- And on the understanding that the Minister will see that my motion is dealt with before the Bill. .

Senator Drake

- Hear, hear.

The PRESIDENT

- I put it to the Senate that Senator Ewing have leave to give notice of motion now.

Leave granted.

Senator EWING

- - I formally give notice of the motion I have read for to-morrow.

Question resolved in the affirmative.

POST AND TELEGRAPH BILL

In Committee

(consideration resumed from 14th June,
vide

page 1172) :

Clause 8 -

In relation to any particular matters State or District, the Postmaster-General may by writing under his hand, delegate any of his powers under this Act (except this power of delegation) so that the delegated power may be exercised by the delegate with respect to the matters specified or the State or District defined in the instrument of delegation, but every such delegation shall be revocable at the pleasure of the Postmaster-General.

Senator Sir FREDERICK SARGOOD

- The last two lines of the clause read -

But every such delegation shall be revocable at the pleasure of the Postmaster-General.

I point out that those words are not required seeing that in clause 35, sub-clause (3), of the Acts Interpretation Bill power is given to " rescind, revoke, amend, or vary the instrument." I move -

That all the words after "instrument of delegation," lines 7 and 8, be struck out.

Postmaster-General

Senator DRAKE

. - The honorable senator is ahead of me ; the Acts Interpretation Bill was only read a first time and ordered to be printed this afternoon.

Senator Sir Frederick Sargood

- It has been circulated for a long time.

Senator DRAKE

- I think the provision to which the honorable senator refers will not be sufficient. This is not a case of an Act conferring "a power to make any instrument (including rules, regulations, or bylaws)" ; it is giving power to the Postmaster-General to issue instructions. Clause 35 of the Acts Interpretation Bill says - Where an Act confers a power to make any instrument (including rules, regulations, or bylaws) the power shall, unless the contrary intention appears, be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to rescind, revoke, amend, or vary the instrument. That will be applicable to the power to make regulations, which implies a power to alter or revoke. I do not think ' the Acts Interpretation Bill will help us at all ; and therefore it is necessary to state that the Postmaster-General also has power to revoke. If that power were not given, it would be open" to the construction that when the Postmaster-General had once conferred a power on any one of his deputies he could not withdraw it.

Senator Sir Josiah Symon

- It is very . important to have this power to revoke at pleasure. It might be a matter of twelve months' engagement.

<page>1200</page>

Senator DRAKE

- Exceedingly.

Senator Sir FREDERICK

SARGOOD (Victoria). - I do not think that difficulty the Acts Interpretation Bill says distinctly - will arise.

The sub-clause (3) of clause 35 of

To rescind, revoke, amend, or vary any instrument.

There is no question of limitation of time. Then this clause 8 says -

The Postmaster-General may by writing under his hand delegate any of his powers under this Act.

That becomes an instrument. This Bill that we are dealing with distinctly gives the Postmaster-General power to do a certain thing - namely, to sign a document or instrument delegating any or all of his powers. The Acts Interpretation Bill surely gives him power to rescind, revoke, or amend the instrument at any time. Therefore, I maintain that those words -

But every such delegation shall be revocable at the pleasure of the Postmaster-General - are not wanted.

Senator Playford

- I think they had better be there.

Senator Sir FREDERICK

SARGOOD. I cannot see the object of them, if you are going to use the Acts Interpretation Bill.

Senator DRAKE

- I think it would be rather dangerous for us to act as though the Acts Interpretation Bill had become law. It has not become law.

Senator Sir Frederick Sargood

- It can always be re-committed.

Senator DRAKE

- It could be recommitted ; but we have two Bills running side by side, and it is hardly safe to assume that the one will become law without alteration. But, entirely apart from that, I am still of opinion that it is desirable that the last two lines should be retained, because the clause in the Acts Interpretation Bill does not apply to a case of this kind, where the head of the department is giving instructions to his officers. The term " instrument" or regulation used there, I think, scarcely contemplates an instrument that is made by Act of Parliament or regulations that are made and have the force of law. If honorable senators will turn to the clause relating to regulations they will see where the clause of the Acts Interpretation Bill will come in. Power is given to make regulations, but nothing is said about rescinding or revoking or amending them. That power is implied. It is desirable - I think necessary - that in this Bill the power to revoke any instructions to officers should be distinctly given.

Senator Sir FREDERICK

SARGOOD (Victoria). - May I point out that the Minister only, takes the power to revoke, while the Acts Interpretation Bill gives power to rescind, revoke or vary. Surely those words are wider than the words in clause 18 of this Bill.

Senator Drake

- If we have power to revoke I think it is quite sufficient.

Senator Sir FREDERICK SARGOOD

- It is a matter for the Minister in charge of the Bill to deal with. I am not going to raise any special objection to it, but it appears to me to be tautology.

Amendment, by leave, withdrawn.

Clause agreed to.

Clause 9 agreed to.

Clause 10 -

Every person appointed as a telegraph messenger after the commencement of this Act shall retire from the service of the Department immediately on attaining the age of eighteen years, unless in the meantime he has been transferred or promoted to some other position in such service.

Senator GLASSEY

- I wish the Minister to explain the necessity for this provision. It is very easy to say that on attaining the age of eighteen years the holders of certain positions shall retire, but what is going to be done with these young men after they retire? Has the Minister any explanation to give on this point 1

Senator DRAKE

- The honorable senator knows what is the practice in the postal department in Queensland, and in most of the other States. Boys come in as messengers, and when they have been in the position a certain time they are drafted into other branches of the service as letter carriers and sorters, and, as a rule, unless a boy shows himself wanting in some respects, he gets promotion to some other branch of the service. The committee will notice that a lad on attaining the age of eighteen years is only to retire from the service - unless in the meantime he has been transferred or promoted to some other position in such service. If he is a bright boy, and does his work well, he is promoted to some other position before he arrives at that age. The object in putting in the clause is to prevent a number of men who should be following some other occupation hanging on to the department in the capacity of messengers. It is not desirable to have men doing boys' work.

<page>1201</page>

Senator Sir JOSIAH SYMON

- I would like very seriously to put it to the Minister whether this is not really reducing legislation to a very low level. I mean that to put in a clause in a solemn Act of this Parliament that these unfortunate messenger boys by virtue of statute shall, at the age of eighteen years, retire from the service, unless, of course, in the meantime they are transferred to a better position, is really quite unnecessary. There are some other provisions which might well be left out, but this one is purely administrative. Surely, it does not require an Act of Parliament to enable the head of the department to make a rule in the ordinary service that messengers, when they reach the age of eighteen years, shall no longer be messengers, and they must go if they do not get any other position. Of course, there is no need of the latter portion of the clause, because, if they are transferred, there is no necessity for the application of the provision. It is really reducing our legislation to a very petty position to enact that a messenger boy in the telegraph service must retire on attaining this age. I think we ought to omit the clause.

Senator CHARLESTON

- [really cannot see why the Minister should desire to get a clause of this sort. It seems to me that it is interfering practically with his own management of affairs. I quite agree with the last speaker, that it is unnecessary. It is merely putting into an Act that which ought to be left entirely to the authorities to do.

Senator Lt Col NEILD

- It certainly strikes one as being very extraordinary that the committee should deliberately enact that a person should retire from a service when he does not occupy the position which is designated. In other words, the clause states plainly that he has to retire providing he is not somewhere else. I think the latter part of the clause at least should be struck out if the clause itself is not negated. How can we gravely enact that a lad shall not be a telegraph messenger when he is already something else ?

Senator Sir Josiah Symon

- When he gets to the age of eighteen he may be fit for nothing else but a telegraph messenger.

Senator Lt Col NEILD

- He might be a small light-weight who would make a very good messenger all his life. He might not have become very large or robust as he has got on in years, but he might still be useful as a messenger when perhaps his physical condition would not fit him to endure more severe physical strain. I agree as to the desirability of leaving the exercise of a power of this kind in the hands of the Minister or the Cabinet.

Senator Sir FREDERICK SARGOOD

- Oh, no. AVe have had the trouble here.

Senator Best

- The honorable senator would not if he had had the Victorian experience.

Senator Sir Josiah Symon

- It is a terrible state of things.

Senator Lt Col NEILD

- I suppose I am right in saying that under the Public Service Bill this is a matter which, unless specified' here, would be in the hands of the com misioner.

Senator Sir Frederick Sargood

- We had to pass a special Act to meet the difficulty.

Senator Lt Col NEILD

.- That is an experience which I own I have not met with in New South Wales, and I should prefer to vote against the clause. I propose to move the omission of all the words after the word " years."

Senator Glassey

- Move the omission of the whole clause.

Senator Lt Col NEILD

.- If the whole clause is ordered to stand, I cannot then move an amendment. If a boy has ceased to be a messenger, the words I propose to omit do not apply. Therefore I move -
That all the words after the word "years," line 4, be omitted.

Senator DRAKE

- I do not think there is any contradiction in the clause. A boy comes on as a telegraph messenger. He is known as a telegraph messenger, and when he attains the age of eighteen years, he has to retire from the service.

Senator Sir Frederick Sargood

- " Unless."

Senator DRAKE

- I understand the point which was taken by the last speaker. Perhaps there is some weight in his objection, still I think the meaning of the clause is perfectly clear.

Senator Lt Col Neild

- If he has been transferred to some other department, then he ceases to be a telegraph messenger.

Senator DRAKE

- He is not a telegraph messenger.

Senator Best

- But he has been appointed as a telegraph messenger.

Senator DRAKE

- He is appointed as a telegraph messenger.

Senator Lt Col Neild

- I shall not press the amendment.

Senator Best

- I should think not.

<page>1202</page>

Senator DRAKE

- -In regard to the objection which was made against the clause, we could not discriminate in the service between a person over eighteen years, 1 who was small, and one who was of more robust appearance, and it w.ould not be satisfactory to have men with moustaches and whiskers delivering telegrams and making a claim on the compassion of the public on the ground that he, a full-grown man, was only receiving 15s. or 17s. a week. We want boys for that work.

Senator GLASSEY

(Queensland). - I can see a difficulty in connexion with this clause. Suppose a boy of fourteen enters the service as a messenger, and he serves for four years ; at the end of that time it is possible there may be no other place to draft him to, but this measure distinctly says that at that age he must go?

Senator Sir Josiah Symon

- To any amount of starvation.

Senator GLASSEY

- It is in the interests of these young men that I think a clause of this kind should not be inserted. It is too great a risk for a young man to run. Suppose there is nothing for him to go to. Is he to be turned into the street after having given four or five years of service? It is a serious hardship to impose on a young man. I would much rather see the matter left in the hands of the Minister and his subordinate than have it made a hard-and-fast rule that a youth must go. I have seen hardships of that kind occur, and I certainly do not wish to see them repeated.

Senator BEST

- In my opinion the committee will make a very great mistake if it omits the clause. When a boy enters the service, and a provision of this kind is law, it means that the contract he makes with the State is that he can only remain, until he is eighteen years of age. In the meantime, therefore, he has to secure for himself some other appointment. If the section, were not in the Act, and that boy were permitted to remain, gradually he would become 20, 25, 30, and 40 years of age, with the result that the Government, to its disgrace, would have men in its service who, probably, in the meantime had got married and had reared a family.

Senator Sir Josiah Symon

- . Are there any telegraph messengers in Victoria 40 years of age ?

Senator BEST

- We have had many, I will not say 40 years of age, but probably 30 years of age, and men, too, with wives and families. I wish to point out the absolute necessity for a clause of this kind.

Senator Charleston

- In Victoria 1

Senator BEST

- These persons are only required for this class of work. The duties are worth no more than would be paid to these boys attaining to 18 years of age. These boys, if permitted to remain, remain at this minimum salary for a very considerable time. Perhaps in the meantime they become married men with families, and I was pointing out that the disgrace is that the Government have in their employ married men with families, at from 15s. to 16s. per week-.

Senator Sir Josiah Symon

- The honorable senator does not mean to say that' the postal people in Victoria pay that amount to married men 1

Senator BEST

- If we strike out this clause that will be possible.

Senator Sir Josiah Symon

- Nonsense.

Senator BEST

- My honorable and learned friend in his very courteous reply has said "nonsense," but I want to tell him that that has been the experience in a very prominent State, and I prefer rather to accept the experience of the State referred to than the opinion of my honorable friend, valuable as the latter may be. In the interests of the public service and in the interests of the individuals concerned, they should be seised with notice that they must find other employment before they attain to 18 years of age, otherwise we shall have the disgrace to which I have already referred repeated here.

<page>1203</page>

Senator PLAYFORD

- I think it is beneath us altogether to pass a law of this sort. Surely we ought to allow some little elasticity in matters of this kind, and although there may be cases of hardship such as have been alluded to by Senator Best - cases in which married men have been receiving messenger's pay - yet I do think that to put in an Act of Parliament a hard and fast rule like the laws of the Medes and Persians, which cannot be

altered in any circumstances, is tying the hands of Ministers' unnecessarily, and- inflicting a considerable amount of hardship on the individual messengers. Cannot we leave it to the Minister to say that in certain circumstances he shall allow these messengers to continue in the department for six or nine month's longer, or even for a year or two years as the case may be, instead of passing a law which binds him to dismiss these lads at eighteen years of age, willy nilly, without any consideration being given to any specific cases at all? If we sanction such a provision the Postmaster-General would not be able to retain them for a single day after they reached eighteen years of age, although he might then have had some billet for them. The thing is absolutely preposterous. It is preposterous to put a provision of this sort in an Act of Parliament when the matter could be better dealt with by regulation. The clause is not necessary at all. The Minister when employing telegraph lads can give them due notice that they are entering into a contract, and that he will have the power when they arrive at eighteen years of age to say that their services are no longer required. But do not let us make a hard and fast rule by which the Minister is powerless to keep them in the service a day longer. He may turn them out - at a time when work is very scarce - practically to starvation. It is a great deal better to leave these tilings to elastic regulations, and to the discretion of the Deputy Postmasters-General throughout the Commonwealth than to insert in a solemn Act of Parliament that these boys must go when they are eighteen years of age.

Senator McGREGOR

- I agree with all that Senator Playford has said. I think there is another view that might be taken of the position that the Postmaster-General and the postal authorities would occupy if this clause were allowed to remain. The postal authorities would be quite at liberty to take on as many boys as they liked to put in the service, because at the age of eighteen years all those whom they did not require would be got rid of. But if this clause were struck out the postal authorities would be very careful as to the engagement of boys under eighteen years of age to carry on the messenger work, because they would have no special command by this Bill to discharge them when they arrived at that age. I think it would be far better if the clause were struck out, and a little discrimination exercised by the postal authorities in the engagement of their boys, so that when those boys arrived at eighteen years of age there would not be so many to dismiss.

Senator Sir JOSIAH

SYMON (South Australia.) - It appears to me that a clause of this sort has really the effect of Parliament assuming on itself a portion of the administration of the Postal Department.

Senator Best

has absolutely convinced me that the only possible justification for this clause is that it might be a prop or buttress for 'a weak Minister. If influence is brought to bear-

Senator Best

- Hear, hear,

Senator Sir JOSIAH SYMON

- My honorable friend's encouraging "hear, hear" confirms me in the position I take up. If influence is brought to bear in respect of a number of lads in the service of the Telegraph department, then a weak Minister would be able to say - "I cannot interfere. I am bound hand and foot, and must do as this inexorable law compels me to do. These boys must go into the street even though they go practically to a state of starvation, because I am powerless." I do not think that we ought to legislate to relieve Ministers of the Crown of a fair responsibility. This is a great administrative department, and Ministers must have the strength to put into their contracts that when a lad attains the age of eighteen years he must leave the department unless there is something else available for him to do ; then the Minister will be able to exercise a merciful consideration, and to say to a boy-" Very good. You have attained the age of eighteen years, and your contract leaves it in my option to turn you adrift, but I will give you another three months, or another six months." I think myself it would be a humane tiring for that reason, apart from everything else, to strike this clause out.

Senator Sir WILLIAM ZEAL

- I think that the committee ought to pause before attempting to interfere with an important department. This clause has been framed by the Postmaster-General as the result of certain experience. If my memory serves me aright there was a great outcry in the Postal department a few years ago in reference to the employment of boys. There were no other positions for them to fill, and they were retained in the

service at a certain salary. If that is so, surely it is better to allow the department a discretion to deal with these messengers in an equitable and fair spirit. No honorable member of this Senate, I am sure, wishes to do any officer, an injustice. I think that Senator Sir Josiah Symon could doubtless frame a proviso which would carry out in effect what he wishes, but I ask the Senate to pause before it attempts to interfere with the Postal department. If honorable members had had experience in some Governments as I have had, they would know that at times a Government wants to be protected against itself.

Several Senators. - Oh !

<page>1204</page>

Senator Sir WILLIAM ZEAL

- Honorable senators may pretend to be very virtuous, but it is common talk and a common experience that a Minister does at times want to be protected against himself. Perhaps he wants to be protected against certain men who are supporting him in the House, and who wish for selfish motives to attain a certain object. I believe that the general wish is that the department should be administered fairly, equitably, and honorably, and that can be done by adding a little proviso declaring that before these lads are turned adrift an inquiry shall be made as to whether there are other offices which they can fill. At the same time it is not desirable that they should be kept on indefinitely unless some other avenue of employment is open to them.

Senator Sir FREDERICK SARGOOD

- Attention has not been directed to the latter portion of this clause, which reads : -

Unless in the meantime he has been transferred, or promoted to some other position in such service.

These words were put into the Victorian Act - from which this clause is taken - which was passed about two years ago, in consequence of the position of a number of these messengers in the Victorian service.

The way in which these lads hung on became a perfect scandal. It is all very well to say that the Postmaster-General should dispense with their services when he feels that he can no longer retain them. It might, be different in other States, but in Victoria it is not fair to the Postmaster-General to lay him open to political influence brought strongly to bear upon him to retain lads in the service as messengers for years after they cease to be of the age at which they should properly discharge those duties. The words I have quoted were purposely put into the section in order, to induce the lads to qualify themselves for promotion in the service, and the results have been what I have indicated. Before that Act was passed, young men were content to go on year after year without attempting to qualify themselves for a better position in the service, but since this section became law in Victoria a number of messengers have so qualified, and have been promoted. Consequently the section so far as they are concerned, has been a dead letter. But there were a considerable number who attained even 25 and 30 years of age, and who were still content to go on acting as messengers. For these men to be still receiving a salary of 15s. or 20s. per week was not a healthy state of things.

Senator PEARCE

- While it may be necessary under this clause to state the age at which messengers should be retired, I think it also necessary to state the age at which they should be engaged.

Senator Sir Frederick Sargood

- The Public Service Bill will do that.

Senator PEARCE

- I move -

That the clause be amended by the addition of the words - " No person shall be so appointed who is of a less age than thirteen years, unless he shall have passed the Fifth Standard Educational Examination. "

Senator Playford

- We are really dealing with departmental matters.

Senator PEARCE

- If the clause is to pass at all, I think it is equally necessary to state not only the age at which the boys shall be retired, but the age at which they shall be engaged. There are at the present time in the employ of the department children who are less than thirteen years of age.

Senator Playford

- They are very small.

Senator PEARCE

- I think I have seen them within the precincts of this House Unless the Postmaster-General assures me , that this matter will be dealt with under the Public Service Bill, I intend to push the amendment.

<page>1205</page>

Senator DRAKE

- The proposal that has been made that the clause should be struck out and the power left in the hands of the Minister looks well at first sight, but I do not think it would work well. The trouble is that the Postmaster-General will not administer the department for all time. One Postmaster-General will have different ideas to another. As the instructions which he gives to his deputies are revocable at any time, it will simply mean that the regulation may be altered at any time in order to allow of some particular individual being retained in the service. We are told that we should try to preserve a certain amount of elasticity, but elasticity implies contraction as well as extension. There will be no elasticity in this matter ; it will simply be continual extension. If a Postmaster-General, under pressure, perhaps, from friends, allows a man to remain as a messenger until he has passed the age of eighteen or perhaps nineteen or twenty, and another goes even farther, will it be possible to get any reform ? If it is considered, then, as most senators seem to consider now, that eighteen is a fair age for a boy to retire, and if a Postmaster-General comes in, who holds that opinion, and wishes to put it into operation, what is he to do? He is at once to discharge all the messengers over that age. It would be a very much greater hardship to require a man who is above eighteen to retire than it would be to require a boy to retire at eighteen, according to the provisions of the statute. I think, therefore, this provision should be in the Bill. With regard to the age at which a young fellow could join, I think that might be left to the regulations.

Senator Sir Josiah Symon

- And so with retirements.

Senator DRAKE

- The school age varies in the different States ; but we will always have this safeguard - that a boy cannot be employed as a messenger until he is over the school age. If he is intelligent and able to do the work I cannot see that there is any wrong in employing him from the time that he leaves school. I am of opinion, therefore, education being a State matter, that in each State a boy should be taken on from the expiration of the school age. I consider that the provision requiring a boy to retire at eighteen should be in the Bill, because it relates only to boys' work. We do not want men employed in this capacity, and I do not think it is any advantage to the community generally that men who ought to be doing other work should be employed as messengers. A boy past eighteen who hangs on to a position like that is only keeping another boy out of it. We ought to take it as a necessity that in this community when a young man becomes eighteen he should have some better occupation to follow than that of running about with telegrams.

Senator CHARLESTON

- The point under discussion is not whether a boy should or should not retire at the age of eighteen, but whether we should insert that provision in this Bill. I quite agree that, no one should be employed in this capacity over the age of eighteen, and I hope it will never be found necessary to employ young men at this very low wage, because I presume the rate of wage for messenger boys will be fixed. Surely a lad of eighteen employed as a messenger will seek work elsewhere in order to obtain better remuneration.

Senator Sir FREDERICK SARGOOD

- That has not been the experience.

Senator CHARLESTON

- Then that only proves that opportunities for profitable employment must have been very bad indeed, otherwise I cannot imagine a young man over eighteen continuing to be a messenger boy, and to be classed as a messenger boy. I object, however to the limit being inserted in the Bill. It seems to me that we should have responsible Ministers. I presume our Ministers are responsible, and they should take the responsibility of boldly saying- "The time has come when this lad must leave the service. There is no chance of promotion, and he must retire." Surely any man in the position of Postmaster-General or Deputy Postmaster-General should be able to take that responsibility.

Senator GLASSEY

- I am sure my honorable friend, Senator Pearce, must see that there is a danger in his amendment. Supposing a boy can pass the fifth standard of education at 10, is there not a possibility of that boy being

employed if this remains? If a boy is 13, then I presume it does not make any provision with regard to his education, but if he is less than 13, and has passed the fifth standard, he is liable to be employed. Coming from Queensland, as I do, I object to the limit of 13 years, because our school age is 14, and if you allow a loophole, then our boys may be taken on at 13. Of course, there may be some exceptional case, where, because of poverty, such a boy might be engaged, but this is a very dangerous thing. In the different States, as the Postmaster-General has pointed out, the school age is different. I would not like to see any interference. A boy should have time to mature physically as well as educationally. It is a dangerous thing to say in a Bill, that in consequence of intellectual brightness a boy should be allowed to come in, at such an age, and that no account should be taken of his physical ability, because the physical ability of that boy would be likely to suffer. I, therefore, suggest that the amendment should be withdrawn.

<page>1206</page>

Senator Lt Col NEILD

- Perhaps, my honorable friend, the mover of the amendment, will see that he must carry it a little further in order to make it effective. Reference is made in the amendment to some standard of education, but it is not stated where that standard exists. 'Possibly, it is a Queensland standard, but I do not know ; and, having no knowledge of what the standard is, I assume that if the Postmaster-General were called upon to administrate the clause in that amended form, he would also be in the dark. The amendment should, therefore, be carried further, so as to clearly indicate what standard is referred to.

Senator GLASSEY

(Queensland).- I do not know that we have any standard of education in Queensland. There is a standard of education in Great Britain. There no boy or girl can be employed in certain work until they have reached a certain age, or unless they have reached the fourth standard of education. I know that has been a provision in the mining laws of Great Britain since 1872.

Senator PEARCE

(Western Australia). - In two of the States, South Australia and Western Australia, there is a provision in the Education Act that a boy who passes the fifth standard in the public schools before he has reached the age of 13 or 14, £ forget which, shall be exempt from the operation of the compulsory clauses of the Act. That is what I was referring to.

Senator DRAKE

- Speaking more particularly in regard to Queensland; I do not think there is anything known as to the fifth standard, so that that term would have no meaning there. The principle which should be adopted is, that a boy should not be employed until he has passed the school age, and that he should be employed as soon after as possible, certainly not before.

Senator Pearce

- With the sanction of the committee, I will omit from my amendment all the words after " years."

Senator Sir WILLIAM ZEAL

- As there has been some question as to whether or not the Postmaster-General should be compelled to retire a messenger after he has reached a certain age, and as some honorable Senators seem to think an injustice might be done by the adoption of such a course, although the experience of the department in Victoria has been to the contrary, I would suggest the following proviso to the clause : -

Provided always that before such messenger is called upon to retire the Deputy Postmaster- General shall report in writing to the Postmaster-General that there is no position in the department to which such retiring officer can be appointed.

If that were added to the clause it would certainly give the Deputy Postmaster-General the fullest opportunity of retaining a boy if he were eligible, and if it were desirable that he should remain in the department.

Senator Best

- Would not that be done under any circumstances 1

Senator Sir WILLIAM ZEAL

- Possibly it might. I am trying to meet the objection that has been raised in regard to the clause as it stands. It seems to me that honorable senators will be taking upon themselves a terrible responsibility if they interfere with the administration of the department, when they have not got the experience which the officials of the department possess.

Senator Sir JOSIAH SYMON

- The whole object of those of us who have been opposing this clause is to abstain from the terrible responsibility of interfering with the Postmaster-General. What we are trying to do is what my honorable friend has expressed very clearly and forcibly. We are trying to save the Postmaster-General and the department from themselves. That is what we are endeavouring to do. May I point out that the proviso that Senator Sir William Zeal has suggested very properly illustrates the great danger into which this Parliament is running by legislating at all on the subject by a solemn statute. This matter bears on the administration of the department, and the Minister has expressly said that the age of admission of messengers into the department is a matter which should be dealt with by regulation. _ If the honorable and learned senator admits that the age of admission -should be dealt with by regulation, what possible reason is there for not dealing by regulation with the age of retirement ?

Senator Drake

- I thought gave it.

<page>1207</page>

Senator Sir JOSIAH SYMON

- The two tilings are absolutely on the same footing. One of the most effective purposes that will be served by Senator Pearce's amendment is to illustrate the danger and the inconvenience of Parliament interfering in this matter at all. I was going to say as Senator Best has said before, and as Senator Drake and Senator Sir Frederick Sargood have mentioned, that influence may be brought to bear. A proviso such as Senator Sir William Zeal has suggested with a view of tempering the administration of the clause would absolutely admit the same kind of political influence which is supposed to underlie the reason for this clause. The moment we introduce that proviso - and I say it with all esteem for my honorable friend, because he is oppressed with a feeling that oppresses us all that we may put the Postmaster-General or the Deputy Postmasters-General in a position in which the rigid letter of the law rather than the principles of humanity would govern their actions in some particular case- the moment we introduce that proviso we open the door to influence. The proviso requires a report to go up that there is no other available position in the service. The moment that power is given to the Postmaster-General he is left open to all sorts of influence that this poor little messenger boy may be in a position to exercise with a view of having some other billet found for him, or with a view of obtaining a favorable report. That would be disastrous. The only reason given for this clause is that it prevails in 'Victoria, and certainly a state of things has been laid before the Senate which is deplorable in the administration of the department in this State. The transfer of the department from the State to the Commonwealth has not come a moment too soon. Now, however, we are adopting quite a different regime. I have the most implicit confidence in the Postmaster-General, and will have confidence in his successors. Though they may not be equal to the high standard which we attribute to Senator Drake, I shall still have confidence in them. I have confidence for this reason, that we are not dealing with one State. How about the central government which happens now to be in Victoria 1 How could influence be exercised here on behalf of a boy in Queenslander somewhere in the Northern Territory 1 The grievances of such a boy would sooner reach the ear of heaven than the ear of the Postmaster-General. The proposal made would work untold mischief, find the only reason for it is that which Senator Best has indicated in his' very forcible address, that it would prop up a weak Minister, and give him an excuse for dereliction of duty in the exercise of a power which he ought to exercise. It would give him an opportunity of saying - " Here is a hard and fast statute ; Parliament passed it, and I am not responsible." I say that is not a position in which we should place any responsible Minister.

Senator FRASER

- I was not here when the discussion commenced, but I now understand what the amendment is. I understand that there is a proposal to strike the clause out altogether, but I cannot see the good sense of doing that. The Minister is administering a department here, and he has had experience of administering a department in Queensland. Those of us who have any knowledge of post-office business in this State recognise that there is a dreadful struggle to maintain these young messenger boys in the department after a certain age, and you cannot wonder at it.

Senator Sir Josiah Symon

- Is that due to protection 1

Senator FRASER

- It is due to one thing, at any rate. Once a man or boy enters the public service not in one case in 10,000 is he anxious to leave it. If they start as boys at a few shillings a week and run up to 30s. a week they will remain there until they are old men rather than face the world. I agree with the Minister that it is better for these youths to face the world when they can battle with it and engage in the pursuits of the world. If you leave them there until they are 25 they are men, and will not adapt themselves to new surroundings. I urge the Senate to -adopt the clause, because I do not see what harm it can do. The Minister is anxious to be protected in this matter, and if he is not' there will be eternal importunity to allow this and that bright boy to remain in the department doing a man's work, when he ought to be a farmer or miner or carpenter, or be engaged in some other employment. I do not see any great objection to the proposal, only to admit boys at a certain age, say 13, or after the school age, but I say- to strike out the clause will make the Bill more difficult to work. Instead of making it more difficult we should make it more simple.

Senator Charleston

- If Parliament makes legislation of this kind any dummy could be a Minister.

Senator FRASER

- In reply to that; I say if you can help the work of the Minister is it not a proper thing to do t If you can assist the Minister in doing his duty to the country as a whole, to the best of his ability, I think you should do it ; but if you make the circumstances too difficult he will be liable to fail in doing his duty. If you make his duties light there is no excuse if he does fail.

<page>1208</page>

Senator Charleston

- You take away all responsibility.

Senator FRASER

- I would take away technical responsibility. That would do harm. I certainly recommend that the clause be allowed to stand.

Senator MCGREGOR

- I cannot really see what senators are driving at. It seems to me that in Victoria it must have been the custom for the Postal .department to take in boys no matter what their qualifications were - old boys or young boys.

Senator Fraser

- They have become old in the service.

Senator MCGREGOR

- Does Senator Fraser mean that the Postmaster-General or any responsible authority under him is not to have power at any time to dispense with the services of any individual, whether boy or man, who is not suitable for the work ? The ridiculousness of that is apparent to any one. This clause shelters the Postmaster-General and his officers in respect to the taking on of boys. If it were not there, and they knew that it was their duty only to take boys into the service who would be likely to be of use to them afterwards, and have the qualifications to fill other responsible positions, they would be much more careful. Put this clause in and they will take on Dick, Tom, and Harry, irrespective of their qualifications. Very probably Senator Fraser might write in to some officer and say - " Here is a boy who requires a position ; you will be conferring a great favour on me if you take him in," and he would be taken in, no matter whether possessed of qualifications likely to be useful in the service or not. He would be taken on simply because the Postmaster-General and his officers know that at 18 years of age they could get rid of him.

Senator Sir William Zeal

- Would they get rid of a good officer ?

Senator MCGREGOR

- It is not likely at all. Senator" Fraser need not be afraid of the bright intelligent boy. If he has qualifications that will make him an efficient officer, they will always be taken into consideration. It is for that reason I oppose the clause altogether. If it is carried I hope the age at which any officer may take on a boy will be made as high as possible, say 13 or 14, but I would rather see the clause dispensed with ; then the postal authorities would do the best they possibly could to get the best boys into the service, and when they got them there they would do all they could to keep them because they would be valuable to the department. On the other hand, take Senator Sir William Zeal's proposal, which is made with the best

intention. Before a boy can be retired a report is to be sent from some subordinate officer to the Postmaster-General that no other position can be found. Could not that be done without this clause ? It is not necessary that such a clause should be in the Bill, giving such an instruction to the Postmaster-General. If he was an efficient administrator he would give that instruction himself, and would say to his subordinate officers - " Be very careful not to recommend for permanent positions persons not qualified to fill them effectively." I hope the clause will be struck out, and that the postal authorities will have to exercise their best judgment in the selection of the boys they take into the service.

<page>1209</page>

Senator DRAKE

- I cannot follow the argument of Senator McGregor. If he thinks that a boy who is not fit for the position is likely to be foisted upon the department through the influence of interested parties, is it not just as likely that the same influence would be used to keep him in the department. . I cannot see how it makes the case any better to argue that influence will be used to get boys into the department. I do not think that is the state of things in the Post-office to any great extent ; but if affairs are so bad, that boys who are unfit are foisted upon the department, that is a reason for passing the clause. The whole question resolves itself into this: - Is this work of running about with telegraphic messages to be done by boys or men? If it is decided that it is boys' work, there should not be the least objection to putting the clause in the Bill. I have shown the difficulties that would arise if this matter were left to the Postmaster-General. He is not in office for all time. One Postmaster-General succeeds another, and if any action has been taken in the direction of increasing the limit, it is almost impossible for a succeeding Postmaster-General to reduce the limit. The boys are in the department, they have grown to be men, and it would be very much harder to remove them than to cause them to retire in accordance with a provision of this kind. So that if it is conceded that .this is boys' work, there is very good ground for the Senate adopting the clause.

Amendment negatived.

Question - That the clause as read stand part of the Bill - put. The committee divided -

Ayes 17

Noes 8

Majority 9

Question so resolved in the affirmative.

Clause agreed to.

Clauses 11 and 12 agreed to.

Clause 13 -

No duty or toll payable at or in respect of any pier wharf quay landing place bridge or ferry or at any turnpike gate or bar or at any other gate or bar on a public road shall be demanded, or taken from or in respect of -

Any person employed to perform any duty of the department when on duty ;

Any person engaged in the conveyance of mails;

Any vehicle or horse conveying mails or postal articles ;

Any telegraph' messenger or line repairer when on duty;

Any vehicle, or horse used or employed by such telegraph messenger or line repairer in the performance of his respective duties ;

Any material or tools used or employed in the construction or repair of any telegraph line; and any person who demands or takes any toll contrary hereto shall be liable to a penalty not exceeding Five pounds.

Senator CHARLESTON

- I have been wondering why the Postmaster-General is taking the power for his officers to use any pier, wharf, landing place, bridge or ferry, without compensating the owners for the use of their property. I recognise that he must have the power for his officers to use these things, but seeing that we shall have to pay the railway authorities and all other persons for the carriage of our mails, I think, that some provision ought to be made for payment to those persons whose property the department uses.

Senator STYLES

- It seems to me rather unfair that the quays, jetties, and piers of the States should be used for a purpose of this kind without some compensation being paid to them as well as private owners for such services.

"While the Postal department was in the hands of the States, it made no difference whether it used the

railways, the piers, or the quays of the States for carrying postal and telegraphic material-; but now I apprehend that each State will have to pay the Federal Government for the carriage of its letters and parcels just as private persons will do. I do not see why the State more than a private person should contribute towards the cost of constructing telegraph lines and telephone lines. The words in paragraph (f) cover all material, I understand. I do not see why these things should go across free, as the letters are not to be carried for the States free of cost.

<page>1210</page>

Senator DRAKE

- This is a provision which I think is found in all Post and Telegraph Acts, and it is based upon the universally admitted maxim that the King's mail is to go free, that it must not be obstructed in any way. There is a good deal in what has fallen from Senator Styles, and I should like, if I could see my way, to arrange in such a way that some compensation should be given to those who have a right to levy tolls upon the public generally for using bridges or ferries, as the case may be; but I do not see how it can be done. . I do not want to anticipate the discussion on clauses 16 and 17 in regard to the use of the railways, because the railways are on a different footing altogether. Take the case of a ferry which is in the hands of a private person, who has the right to charge 3d. or 2d. a passenger. That is a very small amount, certainly; but if we once admit the principle that a toll may be levied on the mail, I do not see where the limit is going to be drawn, and it would be possible for a private individual, perhaps, who had the lease of a ferry to absolutely stick up the mail unless his own terms were conceded. That is the way of putting it from the other point of view. I think the committee will see that any attempt to allow tolls to be levied on the mails would lead to such a very unsatisfactory state of affairs that there is no other course open except to assert the well known right that the King's mails must pass.

Senator STYLES

(Victoria).- I did not refer to the mails at all, but to material required for the construction of new works or the maintenance of existing works. In some cases large quantities of material will be brought into a State, and its wharfs, piers and jetties will have to be used, and even if a wharf belongs to a State, I do not see why it should not be paid for the use of them. I am speaking only of construction, and not of the carriage of the mails. This is a big principle, and I am quite sure that honorable senators will see that time after time, when we are considering not only postal matters, but other matters, this same question will arise as to whether the States are to receive any compensation for certain works carried out by them, or permitted to be carried out by them. . It seems to me that in those cases the State has a right - as I understand that it will be paid for the carriage of all mails - to be reimbursed the cost of maintaining any works which the telegraph and postal department may use in the transport of their material.

Senator DRAKE

- The last speaker has spoken particularly of wharfs, vessels and jetties, but the wharfs and jetties may be in the hands of private individuals, and though of course the argument I have used may not be quite so strong in regard to conveying material as it is in regard to allowing the mails to pass, it really is an extension of the same principle. Suppose a telegraph line requires to be constructed, and there is only one landing-place where the wire can be landed, and the jetty is in the hands of a private person who says " I shall not allow you to land your wire unless, you pay so much upon it." In that case it will prevent the construction of a telegraph line.

Senator STYLES

- Would not the department give him anything ?

Senator DRAKE

- I have pointed out where the difficulty comes in. I should like to see persons compensated, but I cannot consent to anything which would deprive the department of the absolute right to travel on the highways or to have their material transported.

Senator Styles

- In the same way as the department enter upon private land, they can do that.

<page>1211</page>

Senator PLAYFORD

- Although I agree with the Postmaster-General in regard to the carnage of mails, I certainly disagree with him as to the necessity for paragraph (/). Thousands or hundreds of tons of wire, and poles, and

insulators may be landed at a place; for instance, at Port Augusta we had 60,000 insulators landed not long ago, for the purpose of duplicating our line across the Continent. They came in big cases. Surely if the wharfs are in the hands -of a State Government, it. ought to receive from the Postmaster-General the same consideration as private individuals would do. Although I -admit that we should take all necessary '-powers for the carriage of mails, I do not think we should take exceptional powers for the carriage of material, and the use of private and State wharfs and jetties, without making the slightest payment. We take the power to use the State railways, but at the same time we put in a clause providing that if we cannot come to an arrangement as to the exact price to be. paid by the Commonwealth for the use of them, it shall be decided by arbitration. Surely when the Postmaster-General is going to make a long telegraph line, and there is possibly only one port at which to land the poles, wire, insulators and various other things, and all the jetties and wharfs are in' the hands of the State Government, he will not contend for a moment that the State should be deprived of their usual tolls over the wharfs. It certainly is not fair to enact such a provision. I do not see any particular harm in a person employed to perform any duty of the department crossing a ferry or going over a wharf. Again, the provisions in paragraph (b) to give this concession to any person engaged in the conveyance of mails: is absolutely necessary. But as regards paragraph (c), a little difficulty arises in giving this right to any vehicle or horse conveying mails or postal articles. Of late years the Post-office has gone in for the parcels post business, and it keeps on increasing the size of the parcels, and is carrying merchandise. We are now actually getting merchandise in quantities from England by means of the parcels post. It. comes out in cases which measure half a ton, and with a number of these cases, coming out by parcels post, it becomes a question whether the cases should be allowed to be carried free .over the wharfs of the State, or private wharfs, without paying anything for the use of them. It appears to me that there is even danger in paragraph (c). I am sure we are willing to give the Postmaster-General all necessary powers so that he shall be able to convey his mails, parcels, and so on, as expeditiously as possible, but at the same time - as he has a monopoly already -we do not want him to have a greater monopoly by reason of the fact that he is able to carry his goods free over private jetties, State jetties, State wharfs,&c. I move - -

That paragraph (f) be omitted.

Senator CHARLESTON

(South Australia). - I understood it to be a principle laid down by the . Postmaster-General that he was not desirous, as head of the department, of doing any gratuitous work, neither was he anxious to get gratuitous work done for him. Therefore, I think that we are under the necessity of dealing with this clause in a way that will carry out the principle enunciated by the Postmaster-General in the very able speech which he made, when introducing this Bill.

Question - That paragraph (f) proposed to be left out stand part of the clause - put. The committee divided.

13

AYES

12

NOES

Majority 1

AYES

NOES

Question so resolved in the affirmative.

Clause agreed to.

Clause 14 agreed to.

Clause 15 -

The Postmaster-General or any person authorized in that behalf by the Governor-General may enter into contracts in writing on behalf of the Government of the Commonwealth for or in respect of the carriage of mails by land and sea or either or for any other purpose incidental to the carrying out of this Act, and may impose such terms and conditions as to him shall seem fit for securing the due regular and efficient performance of the contract.

Senator FERGUSON

- I should like to see this clause amended in such a way as will provide that no contractor shall be allowed

to sublet his contract. I allude particularly to country contracts. We know very well that once a contract is sublet it is sublet at a reduced price at which the contractor cannot carry out his contract satisfactorily, either to the Government or to the public.

Senator Best

- Does not the contract itself as a rule provide against subletting? I know that our Government contracts do.

Senator FERGUSON

- This clause does not provide against it.

Senator Best

- But the contracts themselves do.

Senator FERGUSON

- If the Postmaster-General says that is so, of course my contention falls to the ground.

Senator Drake

- It is the practice in Queensland not to allow contracts to be sublet; of course I am speaking from memory, but I feel sure that I am correct. It has to be borne in mind also- that sureties have to be given in the case of every contract for its efficient performance and no such provision is violated.

Senator FERGUSON

- I know of a case in which, to my own knowledge, a contract was sublet in Queensland, although the contractor had to provide sureties. As a rule the man who is in a position to get sureties is in a position to carry out his contract. But in cases where men are anxious to obtain contracts and are not able to get sureties, they get contracts sublet to them, and these are generally carried out in an unsatisfactory manner, both to the Government and to the public. These men are very often late with their mails. They are, as a rule, small selectors. They have a number of bush horses, and expect to carry out their work with grass-fed animals. When a dry season comes they cannot afford to buy feed for them, and in very many cases they have to throw up their contracts. Subletting is always a bad principle to be allowed. If this clause were amended by the insertion of a provision prohibiting a contractor from subletting his contract, it would be all right.

<page>1212</page>

Senator Sir JOSIAH SYMON

-The Minister ought to consider that the point so very forcibly put by Senator Ferguson furnishes an instance in which the statute might be used with far greater force than in the case of the little messenger boys.

Senator Best

- This is a reflection on the vote of the Senate.

Senator Sir JOSIAH SYMON

- I am not reflecting upon the vote of the Senate.

Senator Sir William Zeal

- The honorable and learned senator is. He instanced the case of the telegraph boys.

Senator Sir JOSIAH SYMON

- Fortunately my honorable friend is not in the chair. He would be ruling in a way that would be altogether out of order. This would be a far better opportunity for protecting the Minister from political influence than was provided in the case of the messenger boys. Senator Ferguson very properly points out that, whilst provision may be made in the contracts that contractors shall not sublet, there are facilities given by which the contracts are sublet. There are far more openings for political influence in the case of a powerful contractor who enters into a contract and wants to sublet it, probably at a premium, than there are in the case that we have already dealt with, of permitting messenger boys to continue in the department after they are 15 years of age. On this I am entirely with Senator Ferguson. I am sure that Senator Sir William Zeal, who put the matter very clearly before the committee, will see that it is desirable that a Minister should have protection under the statute, so that if a contractor comes to him and says - "I cannot complete my sureties," the Minister will not be driven by the force of political influence to say - "I will allow you to sublet to so and so, and I will be content with a surety which is less than that previously arranged for." To protect himself I think that a provision, such as Senator Ferguson suggests, would be very useful. The Minister, in a case such as I have just indicated, would then be able to say - "There is no 'elasticity in

this Act, and, therefore, I cannot do what you ask." I hope that Senator Ferguson will press his amendment so as to secure immunity from political influence.

Senator Sir WILLIAM ZEAL

- I think that if the Postmaster-General undertakes to consider this matter and to make provision for it in the statute it will be quite sufficient. We do not want sweating in postal contracts any more than in contracts for manufactured goods, and I am sure that the remarks of Senator Ferguson are entitled to every consideration. I trust that honorable senators will support him, and that the Postmaster-General will give effect to his very reasonable suggestion.

Senator DRAKE

- I do not propose to make any alteration in the clause. I will inquire what the practice is in the other States in regard to postal contracts, but I think I shall find that in all the States the practice has been uniform, and that a clause has been inserted in all contracts against subletting.

Senator Sir FREDERICK SARGOOD

- This clause appears to me to give very considerable powers to the Postmaster-General. Clause 14 requires the consent of the Governor-General to arrangements with the United Kingdom or any foreign country. Clause 15 gives the Postmaster-General, without any action of the Cabinet, unlimited power" with regard to all other contracts. Many of these contracts will involve very considerable sums of money. They will be larger than those referred to in clause 14,, which are hedged about by the consent of the Governor-General in Council. Clause- 15 provides -

The Postmaster-General, or any person authorized in that behalf by the Governor-General, may enter into contracts'.

Any other person would mean a Deputy Postmaster-General. It appears to me that where the Commonwealth is to be committed to very large amounts it is necessary to guard the funds of the Treasury by inserting the words " Governor-General " in lieu of " Postmaster-General." I shall be glad to hear the Postmaster-General's views on this point.

Senator DRAKE

- It has been almost the invariable practice for the Postmaster-General to enter into contracts. Clause 14 provides for arrangements being made with bodies outside our own country,, and that being so it is necessary that that should be done by the Governor-General in Council. Clause 15 refers to contracts made with persons, and the Postmaster-General, I think, is the proper authority to have that power. Of course the Postmaster-General in a matter of that sort means the Government.

Senator Sir Frederick Sargood

- Not usually.

<page>1213</page>

Senator DRAKE

- Well, the Postmaster-General signs the contracts. He would not enter into a very large postal contract without having the support of the Cabinet. It would probably be a Government action. So far as I am aware, in every case the

Postmaster-General enters into the contract. That is the difference between clause 14 and clause 15..

The CHAIRMAN

- Before putting clause 15 I would point out that if Senator Glassey desires to move his proposed new clause " 15 (a)" he will not be able to do so now. We shall have to go through the whole Bill, and then take the new clauses in the order in which they come. If he desires to deal with it now I think he might add the words as a proviso to the clause.

Senator GLASSEY

- I am in the hands of the legal gentleman who drafted the clause, and following his instructions and his legal knowledge must be better than mine - I adopted his proposal. If it be your view., Mr. Chairman, that, the course proposed by you is the more convenient one, I have no objection at all, provided, of course, that the Postmaster-General agrees to it.

Senator DRAKE

-I would, suggest to the honorable senator that he should move his amendment as an addition to the clause.

Senator Glassey

- Very well.; I will move it as an addition-

Senator DRAKE

- Do not do so yet. This is the clause with regard to which the question of subletting has- been broached, and I have suggested that I will give, an opportunity for its re-discussion in connexion with that subject. It has just occurred to me, however, that if we amend the clause in any way, we shall not be able to recast it.

Senator Playford

-We can recommit it

Senator DRAKE

- I have some doubt whether, after the Bill has been recommitted, I can strike out anything, which has been put in by the Senate.

Senator Sir Josiah Symon

- The honorable and learned senator can recommit and alter any clause.

Senator DRAKE

- It. looks-, like going back on the vote of - the Senate.

Senator Sir Josiah Symon

- It is often done.

The CHAIRMAN

- When a Bill is recommitted there is really another committee, and I understand that anything can be done.

Senator Sir FREDERICK.

SARGOOD (Victoria). - My amendment would, I think, come first. I wish to point out that; while it has been the custom in some States for . the Postmaster-General to enter into contracts of his own motion, still, we are dealing now, not with one State, but with six States. The amounts involved in some of these contracts will be exceedingly large. I think it will be wise, in the interests of the Commonwealth, if we . provide that the power to enter into these contracts shall not be vested solely in the Minister, but in the"

Governor-General -in Council. With a view to testing the question I move -

That the words "Postmaster-General;" line 1, be omitted, with a view to insert, in lieu thereof, the words "Governor-General."

Senator DRAKE

- Has the honorable senator considered the enormous difficulty that will be involved in connexion with the signing of contracts, if nothing else, by the adoption of his amendment? The honorable senator is looking exclusively to cases of certain very big. mail contracts, and no doubt there are a few. They are only entered into, however, after very considerable deliberation, and the action of the Postmaster-General has the approval of the Government. Will Senator Sir . Frederick Sargood consider for one moment the hundreds of mail contracts that are made every year 1 I do not know what they may be in Victoria,, but in Queensland they run into hundreds. I have had piles of them to sign, and surely each one of these contracts is not to be made by the Governor-General in Council, Many of them are mail contracts for £20, or £30, or £40 a year.

Senator Best

- We see whole pages of Gazette notices in relation to postal contracts:

Senator DRAKE

- Yes. Those advertisements only give the names of persons, and yet there are columns of. them. In each case a contract has to be signed in duplicate. The work is enormous. I do not think it would-work to turn this duty over to the Governor-General .

<page>1214</page>

Senator PLAYFORD

- All this has arisen, from the fact that clauses 14 and. 15 overlap. It is provided by clause 14 that: - The Governor-General.may make, arrangements with the.Postmaster-General in the United Kingdom or with the proper authorities of any British possessions or of a foreign contract with respect to - (a) The transmission by land or sea or by both of mails or postal article between the Commonwealth and the United Kingdom or the British possession or foreign country.....

That power is given to the Governor-General. Yet in clause 15 the same power is given to the

Postmaster-General. It provides that -

The Postmaster-General or any person authorized in that behalf by the Governor-General may enter into contracts in writing on behalf of the Government of the Commonwealth for or in respect of the carriage of mails by land and sea or either or for any other purpose incidental to the carrying out of this Act and may impose such terms and conditions as to him shall seem fit for securing the due regular and efficient performance of the contract.

Senator Glassey

- Clause 15 relates purely to contracts within the confines of the Commonwealth.

Senator Sir Josiah Symon

- But it does not say so.

Senator- PLAYFORD.

- The clauses overlap. If we are going, to distinguish between' the authority possessed by the Governor-General in Council in entering into contracts in regard to these mails by land or sea, and desire to confide to him the power to enter into such contracts, we must have some limit to clause 15. Under the latter clause, the Postmaster-General has power actually to enter into these contracts irrespective of the Governor-General in Council altogether. There is no limitation whatever of his power under clause 15. The Postmaster-General can enter into contracts with Great Britain under that clause. It is in consequence of the overlapping of the powers here given that this confusion has arisen. I agree with the Postmaster-General as to the impossibility of the Governor in Council dealing with all these small, mail contracts throughout the Commonwealth. It is simply out of the question. We want, in the first place, to clearly state that the Governor-General should have sole power with regard to the important mail contracts with, foreign countries, and with the mother country. Under clause 15, the Postmaster-General and other people, who might be authorized by the Governor-General, would have power, to make these contracts. The confusion has arisen from the taking of a clause out of one particular Act and a clause out of another Act, without noticing that the powers given by the one overlap the other. We should limit the powers of the Postmaster-General under clause 15 to matters within the Commonwealth. That, I believe, is what was really intended. If we do this we may still- authorize the Deputy Postmasters-General throughout the States to deal with tenders as they have been doing in the past, accepting them and signing them on. behalf- of the Governor-General, who is the head of the Commonwealth in that respect. Some new words should be introduced in clause 15. Several proposals have been made in regard to it.

Senator Glassey

desires to move something in respect to it, and I think it would be wise to postpone its consideration until we have gone through the rest of the Bill. The Postmaster-General would then be able to come down with such limitations of the powers conferred on him under clause 15 as would prevent them overlapping the powers of the Governor-General.

<page>1215</page>

Senator EWING

- I do not see that there is very much in the objection raised by the Postmaster-General to Senator Sir Frederick Sargood's amendment, because the Governor-General, as the clause stands, has the power to authorize some one in each State to sign a contract on his behalf. All that the amendment means is that it shall not be in the sweet will of the Postmaster-General to do exactly as he likes. The contract must be accepted by the Executive, and then they can authorize any one they choose to sign on their behalf. I think there is really no practicable difficulty. If my memory serves me right, the contracts in Western Australia, are accepted by the Executive. The Executive considers them, and accepts them, and then the Postmaster-General signs them. The actual acceptance of the contract is done by the Governor in Council. I think it is a desirable thing, that the power should be left to the Executive to accept contracts, which sometimes are very large and sometimes very small, rather than that it should be left, in the hands of the Postmaster-General.

Senator GLASSEY

(Queensland). - A few words added to clause 15 would make it clear, and there would be no possibility of the two clauses clashing. If we were to add words enabling the Postmaster-General to enter into contracts " within the Commonwealth," that would overcome the difficulty

Senator Sir JOSIAH

SYMON (South Australia). - May I suggest a better and a shorter amendment by putting at the beginning of clause 15 the words -

Except in respect to the matters referred to in clause 14.

I think that would meet the case as far as this point is concerned. It would prevent the two clauses being absolutely in conflict. With regard to the suggestion made about the postponement of clause 15, it would meet the case if it were possible, which it is not, for us to postpone clause 14 as well. That, however, would have to be a matter for recommitment now. These two clauses, 14 and 15, ought to be consolidated. Confusion has arisen from a desire to take from the different Post-office Acts in the various States those provisions which were intended to deal exhaustively with the whole matter of contracts. They are put into this Bill as though they dealt with separate subjects. Clause 15, taken from the New South Wales Act, was evidently intended to deal with all postal contracts whatsoever, and the language is sufficiently comprehensive to cover them all. In that respect Senator Playford's criticism is well founded. Clause 14, taken from the Queensland Act, only deals with oversea and foreign mails ; but clause 15 would have dealt with them, too, except that it would have enabled the Postmaster-General to enter into contracts instead of the Governor-General. I rather agree that even under clause 14 it is unnecessary that the Governor-General should enter into contracts. The Postmaster-General is the Minister of State, and clause 15 should be so framed as to enable the Postmaster-General, who is the responsible Minister, and who is acting as the hand and voice and mind of the responsible Government of the day, to enter into these contracts. They are not autocratic. They are entered into by the Governor-General in his constitutional capacity as representing the Ministry. Therefore it will be well to consider whether clause 15 should not be adapted to deal with the whole system of contracts, relieving the Governor-General of the necessity of signing any of them and making the entire provision one that would be effective. The observations made by the Postmaster-General seem to me to be conclusive. It would never do to ask the Governor-General to sign all mail contracts, whether immediately outside or within the boundaries of the Commonwealth.

Senator DRAKE

- I think that Senator Sir Josiah Symon is wrong this time, and also Senator Playford, though he assumes that he has made out a very clear case. I would ask the committee to look at the distinction between clauses 14 and 15. Clause 14 has nothing whatever to do with the making of contracts.

Senator Playford

- What is the difference between arrangements and contracts ?

Senator DRAKE

- A very great difference. We make arrangements with the United Kingdom or with a foreign country to carry our mails for us. That is not a contract. At the Berlin convention we entered into arrangements with the United Kingdom and with foreign countries with regard to the carriage of one another's mails. We have an agreement by which our mails are carried by those countries and their mails are carried by us. That is quite a different thing to a contract. The person who must negotiate and make arrangements with a power outside of ourselves, either Great Britain or any foreign country, must be the Governor-General.

Senator Playford

- It is a contract to all intents and purposes. Have the various States not entered into contracts with Great Britain ?

Senator DRAKE

- We are parties, to the subsidy paid by Great Britain, but the contract is made by the Postmaster-General of Great Britain.

Senator Sir Josiah Symon

- But there must be a bargain between us and Great Britain to pay our share.

Senator DRAKE

- Any communication that takes place between the Commonwealth and the Postmaster-General of Great Britain must be through the Governor-General, but that is apart altogether from the power to make contracts. Clause 15 deals with an entirely different subject.

Senator Playford

- We agree with Great Britain to pay a certain sum of money.

Senator DRAKE

- I am not quite sure how that arrangement stands. I should like to know whether that contract is signed by the Postmaster-General of Great Britain alone, or whether it is also signed by any person on behalf of the States who pay portion of the subsidy

Senator Playford

- It is signed by the Postmaster-General of Great Britain alone, on behalf of those who enter into an arrangement with him to pay him a certain sum of money.

Senator DRAKE

- Is the contract signed by any one else except the Postmaster-General of Great Britain ?

Senator Playford

- No it is not.

<page>1216</page>

Senator DRAKE

- I accept the honorable senator's assurance upon that point. I think perhaps he is correct. The contract in that case is ' made by the British Postmaster-General, and we make arrangements with him by which, on the payment of a certain sum of money, our mails are carried for us. That is an arrangement that could be entered into by the Governor-General.

Senator Playford

- It was made by the Premiers of the States concerned in my time. Each State had to contribute so much.

Senator DRAKE

- It will probably be found that the action taken was taken by the Governors of the separate States.

Senator Playford

- The Premiers made the arrangements through the Agents-General. The contract was not entered into until we had agreed with the Imperial Government. They said they had certain offers ; those offers were, for the carriage of mails for a certain sum of money, and we were asked whether we would agree to the terms and conditions and what would we pay. For all practical purposes I say we entered into a contract.

Senator DRAKE

- Unfortunately we are discussing the subject without having the exact facts before us. Honorable senators can see the distinction between clauses 14 and 15. One refers to arrangements to be made with somebody outside of ourselves, and the other deals simply, with contracts. I think the suggestion made by Senator Glassey would have no effect because the contract is probably made here. If we wanted to enter into a contract to carry mails to New Zealand it would be made here.

Senator Playford

- But the Governor-General would make that. ; that is a foreign country.

Senator DRAKE

- No, I think that if we make any contract here for the carriage of our mails that contract may be made by the Postmaster-General ; but if we want our mails carried by some other country then we have to make arrangements with the authorities in that country, and the negotiations have to pass through the Governor-General. I am quite willing that clause 15 shall be postponed for a reconsideration of the whole matter, but I do not like to deprive Senator Glassey of the opportunity of raising the question embodied in his amendment.

Senator GLASSEY

(Queensland). - I do not want to jeopardize my chance of proposing the amendment. If the postponement would have that effect I should object to it.

The CHAIRMAN

- It cannot have that effect,

Senator GLASSEY

- Seeing that there is a considerable difference of opinion with regard to. the power which should be conferred on the Postmaster-General in the making of contracts, and that there is a likelihood of this clause clashing with clause 15, I have no objection to its postponement. The Postmaster-General struck a note that I think is worthy of some consideration. My intention with regard to this amendment is not merely to confine its operation to the manning of ships with white crews within the confines of the Commonwealth. I am anxious that the ships which carry our mails to Great Britain and elsewhere, shall be manned by people of our own colour. I do not want to circumscribe the operation of the amendment. I

want, as I believe the people generally want, to carry out a policy both on land and on sea, that companies who carry our mails shall employ white and not black men. At the same time, if there is no fear of the amendment being in any way jeopardized, I have no objection to the postponement of the clause. " The whole question can be considered in the meantime, and we can debate it fully afterwards.

Clause postponed.

Clause 1G -

The principal railway official of every State shall carry mails on any train run upon the railways under his control if required by the Postmaster-General so to do, and shall provide all usual facilities for the receipt, carriage, and delivery of all mails that he is required to carry.

Senator DRAKE

- This clause provoked a great deal of discussion on the second reading. I do not know what conclusion senators have come to on the subject, but I would like to point out that it is absolutely necessary that this power should be given. I think I can show the reason why, and if I can show that it is absolutely necessary, I shall have gone a long way to prove that we have the power under the Constitution.

Senator Sir Frederick Sargood

- The Minister had better take the power.

Senator DRAKE

- Very well.

<page>1217</page>

Senator BEST

- I do not intend in any way to thwart the Government in seeking to carry the clause, if they have so determined, in the form in which it appears. I do, however, intend to record my protest against it for more than one reason. First of all, I do not think the Commonwealth has power to enact a clause of the kind, and I would ask that the Senate be careful in a matter which practically means encroaching very seriously upon State rights. Now, we are here to protect the rights of the States, and if they bear in mind the fundamental principle underlying the Constitution, perhaps honorable senators will realize the doubt there is as to whether we have power to make an arrangement of this kind. The several States joined together, and declared that in respect of various matters which they enumerated in section 51 of the Constitution, they would give the control to the Commonwealth Parliament. With regard to everything else, the residue of control, that was to remain in the hands of the several States. The States in particular have been specially careful to retain absolute control of the railways, as they have retained all liability in regard to debts and loans contracted for the purpose of making those railways. There was one exception made when it was provided in sub-section 32 of section 51 of the Constitution Act : -

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 -

The control of railways with respect to transport for the naval and military purposes of the Commonwealth. In that respect only does the Constitution Act give power or control to the Commonwealth to interfere with the railways. With that solitary exception, the residue of power remains absolutely and completely in the several States. It is quite true that in sub-section 5 of section 51 the Constitution Act provides -

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 -

Postal, telegraphic, telephonic, and other like services.

Senator Charleston

- We must give them the means to do it.

Senator BEST

- That has been handed over to the Commonwealth. What I feel is that all we have power to do is to enact that it shall be lawful for the Commonwealth Government to enter into contracts with the State for the purpose of carrying out sub-section 5 of : section 51 of the Constitution, namely, everything; that is necessary in regard to the postal, telegraphic, telephonic, and other like services. But the terms, of clause 1.6 of this Bill go far beyond that. In peremptory fashion it says-

The principal railway official of every State shall carry mails on any train upon the railways under his control if required by the Postmaster-General so to do, and shall provide all usual facilities for the receipt, carriage, and delivery of all mails that he is required to carry.

Senator Sir William Zeal

- There is no harm in that.

Senator BEST

- I am not saying a word against the policy of the matter. If this Parliament has the power to do it it is completely right, but in my opinion it has not the power to enact a clause of the kind. It is quite true that a tribunal is provided whereby differences of the kind may be settled, and if the States feel strongly about it, as I have reason to think some of them do, it will be competent for them to go to the High Court, when it is established, and to see whether this Parliament had the power to make a law of that kind.

Senator Sir Frederick Sargood

- And this will be the quickest way of doing that.

Senator BEST

- I do not agree with my honorable friend. What I think is that this clause should be an enabling clause.

Senator Ewing

- It is of no use doing what we know to be wrong.

<page>1218</page>

Senator BEST

- Precisely. If there is even any doubt about it, as I submit there is, then I think as a matter of policy it is unwise for us to attempt to make this enactment. I am quite aware that the honorable senator in the chair cited the American case of McCulloch versus the State of Maryland, which deals with somewhat analogous questions. I do not say that the case is inconsistent in any way so far as he cited it, with the contention I am making. And what is more, we cannot attempt to follow slavishly any dicta in American cases. We have most carefully to see if the wording on which those cases have been decided is - in every respect similar. And while in many respects the American decisions have to be completely respected, on the other hand we are not fully aware of all the circumstances connected with the various cases. The point I am making is that we must not, without hesitation at all events, accept the dicta laid down in those cases, because we must see that the wording of the Constitution on which they were decided was completely analogous in every respect to the wording of our own Constitution. In my opinion we have not the power to make this enactment, having regard to the latter portion, which, actually says that we are going to impose on the State the expense and the responsibility of providing facilities for the purpose of carrying out our work.

Senator McGregor

- For which we provide that they shall be paid.

Senator Sir William Zeal

- There is no harm in it.

Senator BEST

- If we have the power to do it, it is the proper thing to do. It is true that the value of the service rendered has to be ascertained by arbitration in the prescribed manner. My opinion is that it would be wise for the committee to omit the clause, but, on the other hand, there is no harm in putting in a clause enabling the Commonwealth to enter into the necessary bargains with the State. ' It may be suggested at once that the State may be most unreasonable, and may refuse to meet the Commonwealth. In that case the State is acting within its rights, but I cannot conceive it possible for a moment that a State which exists to serve the public in the same way as the Commonwealth does would act in any selfish, unfair, or unjust spirit in a business arrangement. I shall content myself with making my protest. I have not had an opportunity, I very much regret to say, to further look up the matter and to secure any authorities in support of my contention. I do not know whether it is possible to obtain any authorities which would directly bear on the point, but nothing that has been said goes to indicate to me that my contention is wrong.

Senator DRAKE

- I think there is clearly power given in the Constitution to the Parliament to enact this clause because the rule that is laid down - quite correctly, I think - is that when power is given to do an act, all the necessary powers are given in order to carry that out.

Senator Best

- That is the whole question. No one denies that.

Senator DRAKE

- I think I shall be able to show the honorable and learned senator most conclusively that this power is absolutely necessary. But first of all I want to refer to his contention that we have not this power, because sub-section 32 of section 51 of the Constitution Act only gives the Parliament the control of the railways for certain purposes: -

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- -

The control of railways with respect to transport for the naval and military purposes of the Commonwealth. I take it that " the control of railways " means something very different from the power we are asking for. No doubt for naval and military purposes it might be necessary for the Parliament to make laws which would enable the Government at any time to simply take possession of a railway for the time being and work it exclusively for naval or military purposes. That is what I understand by the term " the control of railways."

Senator Fraser

- That is quite correct.

<page>1219</page>

Senator DRAKE

- But in this clause we are not asking for control of the railways. We are simply asking to be put in a position to be able to insist that the mails shall be carried, and in clause 17 we provide in the fairest possible way for the payment. Let me read from a fairly good American authority - " Cooley's Constitutional Limitations" - the conclusions of the author, based to a certain extent on the decision of Chief Justice Marshall in the case cited by Senator Dobson. He says, at page 78 -

The implications from the provisions of a Constitution are sometimes exceedingly important, and have large influence upon its construction. In regard to the Constitution of the United States, the rule has been laid down that where a general power is conferred or duty enjoined, every particular power necessary for the exercise of the one or the performance of the other is also conferred. The same rule has been applied to the State Constitution, with an important modification by the Supreme Court of Illinois. " That other powers than those expressly granted may be, and often are, conferred by implication, is too well settled to be doubted. Under every Constitution the doctrine of implication must be resorted to in order to carry out the general grants of power. A Constitution cannot, from its very nature, enter into a minute specification of all the minor powers naturally and obviously included in it, and flowing from the great and important ones which are expressly granted. It is therefore established as a general rule that when a Constitution gives a general power, or enjoins a duty it also gives by implication every particular power necessary for the exercise of the one or the performance of the other. The implication under this rule, however, must be a necessary, not a conjectural or argumentative one. And it is further modified by another rule, that where the means for the exercise of a grant of power are given, no other or different means can be implied as being more effectual or convenient." The rule applies to the exercise of power by all departments and all officers, and will be touched upon incidentally hereafter.

I think there can be no doubt whatever that the use of the railways of the States is absolutely necessary for conducting the mail services of the Commonwealth. The railways of the States have practically become the high roads. The King's highway has given place to the railroad, and if railway companies, or if the State, as owner of the railways, had the power to prevent the passage of either persons or goods, practically the highway would be blocked' by them.

Senator Best

- It is the most expeditious way of doing it perhaps.

Senator DRAKE

- It is practically the only reasonable way.

Senator Best

- Water or roads 1

Senator DRAKE

- Once we could transport our mails to every State by water ; but practically, in order to carry our mails from one State to another, we have to pass over the railroads, and in some cases we have to pass over the railways of an intervening State. I have shown the reason why it is absolutely necessary that this power should be given. It was not so necessary before federation, for the reason that the same

Government was running the mails and running the railways, and being the same party there could not possibly be any conflict. But now that we are dealing with the railways of six different States it is absolutely necessary, in order that justice shall be done to all, that there shall be power given to provide for the carriage of the mails over those railways, and for fixing the rate of remuneration to be paid to the States. The whole thing can be pretty well clinched by what has taken place during the last two or three days. I am not going to mention the particular State concerned, but one of the Deputy Postmasters-General received a letter from the Railways Commissioner in one of the States saying that after a certain date a certain sum of money would be required for the carriage of the mails, and asking him to see that the amount was ' provided on the Estimates. Seeing that the amount paid to the railways of that State had been increased only a short time before by about-

Sir William Zeal

- Do not give yourself away.

<page>1220</page>

Senator DRAKE

- I am not going to give myself away. The amount had been very considerably increased quite recently, and yet there was a demand made for an additional increase of about 25 or 30 per cent. Under my instructions a letter was written to the Commissioner asking him the reason why this large demand was made. Now, if we have not this power, what will be the result? We must have this power, and I very much regret if any legitimate objection can be taken to the language in which this clause is couched. It never occurred to me that any State would be so sensitive as to take exception to the terms employed in the drafting of such a clause. We must have this power, for the simple reason that if there is no means fixed of arranging for the carriage of the mails over the railways of the various States, then the Railways Commissioners may charge any price they like. That means that they may make the price perhaps prohibitive. In some cases, in order to carry the mails between States, it is necessary to carry them over the railways of an intervening State. What is going to happen if that particular State can charge any toll it likes? If that practice is once started, where will it stop? If the Railways Commissioner of one State is going to make a demand, there will be a general scramble on the part of the Railways Commissioners to balance their revenue and expenditure by making a very big demand on the postal service. It is perfectly clear, therefore, that the postal service could not be carried out without some such provision as this being inserted in the Bill. Under it there will be no desire to do an injustice to any State or to take an advantage of it unduly. It is simply a provision insuring that the mails shall be carried over the railways, and making the fairest possible arrangement for payment to the States.

Senator Sir WILLIAM

ZEAL (Victoria). - I quite agree with the remarks of the Postmaster-General, and I am rather surprised at Senator Best

objecting to this very wholesome provision. Clause 16 says that the Postmaster-General may make a bargain with any State for the carriage of the Commonwealth mails over its railways. If the Postmaster-General sought power to compel the Railways Commissioner to run a particular train, for the carriage of those mails there would be something in

Senator Best's

argument; but inasmuch as he only proposes to utilize the excess service, where is the objection? There is not a railway company in existence that would not jump at such a provision. If the Commonwealth Government attempted to impose on a State railway a condition that it should convey mails at a price that did not pay, then all our sympathies would be against the Commonwealth. But the Commonwealth Government merely proposes to ' make the

States carry those mails and to pay them for it. It will pay them handsomely, too. In former times I know that a claim was brought against the department and a very large sum was asked for the carriage of mails. But if such a provision as clause 17 were in operation there could be no difficulty at all. Again, there has been an attempt to introduce private railways into this State, and in some of the States there are already private railways, notably in Tasmania to Zeehan and the Mount Lyell gold-fields. If such a provision as the one under discussion be not inserted these private railway companies may refuse to carry our mails. They should be bound by certain conditions, and as the Commonwealth Government proposes to pay the various States for the carriage of their mails, and to pay them handsomely, I can see

no objection whatever to the provision.

Senator FRASER

- I quite agree with the remarks of Senator Sir William Zeal. I am under the impression, however, that the Bill does not provide for the carriage of mails over private railways. There is a private railway between Moama and Deniliquin. I was a director of that company for many years. In the Bill authorizing the construction of that line, the Government, of course, inserted a provision that the company should carry the mails at reasonable rates, but that provision does not give the Commonwealth Government the same power as the State Government possesses'. It is therefore absolutely necessary to have some such clause as this inserted to enable the Government to make reasonable arrangements. Clause 18 specially guards against any undue advantage being taken of any State. Therefore I think that this provision should be passed as it stands.' Section 109 of the Commonwealth Constitution Act provides that where there is any inconsistency between a Commonwealth law and a State law the Commonwealth law shall override such State law. I do not think that we are overreaching the Commonwealth Act in any way, or that we are infringing upon State rights by passing this clause. I would like the Postmaster-General to look into the question of private railways.

Senator Best

- It does not cover that.

Senator Drake

- I will look into that.

Senator PLAYFORD

(South Australia). - It seems to me that the arguments in favour of the contention of the Postmaster-General upon this point are absolutely overwhelming. If it is, as hinted at by Senator Best,

that this case may be eventually taken to our Federal Court for decision, I am sure that that Court will give a similar decision to that given by Chief Justice Marshall in the United States, and that the same law will govern this Commonwealth as governs that country. That decision is a sound common sense one. If we give any particular body legislative power to do certain things, we give them power to do everything necessary for the carrying out of the powers we have granted them. When we are told that Parliament has the power to make laws for the good government of the Commonwealth, &fcc., there is not the slightest doubt that full powers were intended and are given. Therefore anything we may require to do for the purpose of carrying on the postal work, we have power to do in reason. It surprises me entirely that Senator Best

should have agreed only a few minutes ago to pass a clause giving the Postmaster-General power to have his mails carried over jetties without paying one cent for that privilege, and yet that he should grumble now that we take power to provide that the mails shall be carried over the railways of the Commonwealth. He has swallowed the camel and is now straining at the dreadful gnat. He swallowed the provision that Parliament shall have the right of the carriage of mails over State jetties and State wharfs as well as private jetties and private wharfs without the payment of a cent to anybody, and yet he never called attention to the fact of how utterly unconstitutional that thing was.

Senator BEST

- - Will my honorable friend allow me. I distinctly stated that I agreed with the policy of this clause, and the only question I raised was as to its legality

<page>1221</page>

Senator PLAYFORD

- It is a singular thing that the honorable senator did not find out that the other was illegal, but it did not suit his particular purpose at the time. Yet the honorable senator voted not only for an illegal thing, but for a highly improper thing in a sense, because we are making use of people's property without paying for it. In this case, however, we make provision for a fair and honest payment for services rendered. If any State does not come to terms, we have a provision for referring the matter to arbitration. I not only agree with the policy, but with the absolute necessity for it. The point made by Senator Best with regard to the control of the railways for transport and military purposes, to the effect that it was not intended by the Commonwealth Constitution that the Postal authorities should have the power to run their mails over the railways of the various States, falls to the ground when we consider that the control of those railways for

military purposes is absolute control of them in every sense. The Commonwealth Government in that case will determine when, the trains shall run,' and as to the stoppage of the traffic. In fact, the section means taking away from the States in the circumstances indicated all their power over the railways. The railways are simply to be used for the Commonwealth, and the Commonwealth may dictate to the States for the time being. Therefore, there is nothing in the argument of Senator Best.

Senator BEST

- My .honorable friend misconceives it altogether.

Senator PLAYFORD

- Upon my word, these lawyers are altogether terrible. The point is so fearfully fine that I am not able to see it in the present circumstances. The honorable senator made use of that argument to show that if the framers of the Constitution had intended that the Commonwealth Government should have power to run its postal matter over the railways, they would have put in a special provision to that effect, because they put in a special provision in regard to military matters. The whole thing falls to the ground when one comes to look at it. I agree with the Government and shall support the clause.

Senator Sir FREDERICK

SARGOOD (Victoria.) -

Senator Drake

says that he is quite certain as to the legality of this clause. I ' wish that I were as sure of its legality as I am of its necessity. I voted for the retention of clause 13 as I shall vote for this clause, because the Bill without these two clauses would be-absolutely useless. I shall vote for it for another reason. If it is to be questioned at all, the sooner it is questioned the better. By including this power, or supposed power, in the Bill, it will. give an opportunity for any one of the States to at once test the matter before the High Court. Unless the power be put in the Bill, then, clearly, the point cannot be brought before the Court so speedily. I trust that, when once disposed of, it will be acted upon immediately, and then we shall lose no time in learning whether the States acquiesce in the power or not. If they do not acquiesce, then the point can be settled before the High Court.

Senator KEATING

- At the risk of having my .attitude misconstrued - a risk-that appears to me to be probable both from my past experience in dealing with this matter and my observation of what has happened to. Senator Best - I must express my disapproval of the policy that is contained in this clause. I deny any necessity for it, and I must distinctly record my disapproval of the form in 'which it appears in the Bill. The clause reads - The principal railway official of every State shall carry mails on any train run upon the railways under his control if required by the Postmaster-General so to do and . shall provide all usual facilities for the receipt carriage and delivery of all mails that he is required to carry.

It has been pointed out by 'Senator Best that the Commonwealth has not the control of the Railway departments of the various States. 'It has the power of gaining the control with the consent of the several States. In the meantime, while we have not the control, although some honorable senators may differentiate between the terms "control" and "use" of the railways for purposes of this kind, we are faced with this possibility. I do not say it is a possibility that is likely to attain to reality or even probability; but there is the possibility of a recalcitrant State refusing, through its principal railway official, to carry the mails in accordance with the terms of this clause. How can the Postmaster-General or the Ministers of the Commonwealth endeavour to force the provision contained in this clause 1

Senator McGregor

- They can send the federal army.

Senator KEATING

- M.y honorable friend says the Federal Government can send the federal army, but he must first form Iris .federal army, and be able to mobilize his federal army to carry out the object in view.

Senator McGregor

- Three .men would do.

Senator KEATING

- It is really only to the form of the clause that I take exception. We all recognise that it. is absolutely necessary that the railways should be utilized for the carriage of mails.

Senator Best

- And will be.

<page>1222</page>

Senator KEATING

- We can get the same result, by couching this clause in different terras, and so avoid the possibility of that litigation -which Senator Sir Frederick Sargood seems so desirous of bringing about.

Senator Drake

- Can the honorable and learned senator suggest a different clause1!

Senator KEATING

- I think I can: The clause as it stands does not cover the case of private railways. We in Tasmania have a number of private railways which, by the terms of their charter, may perhaps be bound to carry mails under certain sections in the enabling Acts by which the promoters were empowered to construct and run them. The clause under discussion, however, would only apply to the principal officer of a railway department controlled by a State. If that officer is bound t'o carry the mails, what is the position in regard to the private companies upon which the Commonwealth must depend in Tasmania ? We have the Emu Bay Railway Company, the Mount Lyell Railway Company, the North Mount Lyell Company, and other companies there. The clause should be more comprehensive. It' should empower the Postmaster-General to enter into suitable arrangements with the officers having control of the railways in the various States, whether they be State or private railways, for the purpose of carrying the mails, on paying a proper and adequate compensation for the carriage of them. Why need we put it in the Bill that the principal railway official in every State " shall" carry the mails if we have not the power to enforce that provision ? I do not think we have the power to -enforce it. Senator Drake has referred to American authorities, upon provisions somewhat analogous to these, and you, Mr. Chairman, referred on the second reading to authorities which you gathered from some American reports. I do not think that those authorities, however, really bear upon the point which is-now in issue. It is undoubtedly, a fact that 'the conferring of powers upon a particular body does necessarily carry with it all those subsidiary powers required to enable it to put them into effect. If the powers conferred on the Commonwealth were powers of utilizing railways for the carriage of mails - and the absence of that provision is a defect in the Constitution Act - if that defect had been supplied and there had been a provision enabling the Commonwealth Government to utilize the railways for the purpose of carrying mail matter, then the dictum laid down ' here, that the conference of powers upon a body necessarily carries with it the subsidiary rights, would apply. Here we simply have a post and telegraph department transferred. We have not a railway department transferred to us, and we know that we are going to use this service for the State. But at this stage of our existence, when there is some doubt as to the powers of the Commonwealth in regard to matters of this kind, why should we, as Senator Sir Frederick Sargood invites in? to do, precipitate a constitutional difficulty -or constitutional litigation, and create immediately a necessity for the establishment of the Federal High Court. Why should we do this when we could achieve the same result by putting in an enabling clause in this Bill empowering the . Postmaster-General to contract with State railways and private railways to carry the mails 1

Senator Playford

- What should we do if they refused to enter into such contracts except at exorbitant rates 1

Senator KEATING

- We should do the same as we will do under the clause as it stands if they refuse to carry them at all.

Senator Best

- They are not going to refuse good business.

Senator Playford

- But they all want to get as much as they can for it.

Senator KEATING

- I do not anticipate that even constitutional litigation will be likely to eventuate from the passage of this clause. It is only a matter of form rather than a matter of substance. The necessity for the clause everybody, agrees with, and there is nothing in clause '16, coupled with clause 17, -which is likely to make the Commonwealth press hardly upon any State. But, it is a matter of form, and, representing as we do the several States, and being here to guard-State rights, we should hesitate before we simply arrogate to ourselves, in my opinion, the right to dictate, even for the purpose of running a transferred service, in

what particular way the officials in a department that is not transferred shall act, so that we shall be able to carry out our work.

Senator Fraser

- It is a State work after all.

<page>1223</page>

Senator KEATING

- It is not my intention to harass the Government in regard to this matter. All that I say is that we should be careful to see that we effectuate what we desire 'to bring about by couching the language of the clause in such a form that it will not give rise to the litigation referred to by Senator Sir Frederick Sargood, and which will be clearly within the powers conferred upon us under the Constitution.

Senator CHARLESTON

- Honorable senators who object to this clause have already accepted the position that, whether it be an interference with State rights or not, the Postmaster-General should have power to use the State Government wharfs, piers, landing places, and ferries, and without any payment at all. Honorable senators who are now arguing for State rights have accepted that provision without a word. Now they object' even to the Postmaster-General having the peremptory right to the use of railways.

Senator Ewing

- We must have the power.

Senator CHARLESTON

- Well, why object to it being stated in the Bill 1

Senator Ewing

- I have not.

Senator Keating

- The use of these words will not give us the power if we have not got it.

Senator CHARLESTON

- Senator Keating has already accepted the principle that the State Government wharfs can be utilized at the discretion of the Postmaster-General without compensation not merely for the carriage of mails, but for the landing of materials for construction. I fail to see therefore how the honorable and learned senator, and others who share his views, can stand up now for State rights when they allowed, them to be encroached upon in this way. It appears to me, if Senator Best's proposal has anything in it all, that we could strike out clauses 16 and 17, because clause 15 would practically carry out all that is necessary. It says that -

The Postmaster-General, or any person authorized in that behalf by the Governor-General, may enter into contracts, in writing, on behalf of the Government of the Commonwealth for or in respect of the carriage of mails by Land and sea or either or for any other purpose incidental to the carrying out of this Act. ...

That would enable the Postmaster-General to have a claim upon the railways.

Senator Keating

- Quite so, but there is no necessity to commandeer the railways.

Senator CHARLESTON.- What I am contending for is that, seeing we have already granted the Postmaster-General power as to State wharfs, powers must be given to him in regard to this matter, commensurate with the duties to be performed. In view of the fact that the six States have entered into a compact, and have decided that the one central authority created by themselves shall do a certain thing, then that carries with it also the right and the power of the Commonwealth to give effect to it.

Senator HIGGS

- I was impressed a good deal by what Senator Best said.

I think the wording of the clause is very harsh. We have been very anxious to maintain the dignity of this Chamber and to see that our rights and privileges are not interfered with in any way, and it has struck me that if we added a couple of lines at the beginning of clause 16 to this effect -

The Postmaster-General should make arrangements with the Parliaments of the States, providing that - That would meet the difficulty.

Senator GLASSEY

- That would not give sufficient power.

Senator HIGGS

- Honorable senators are contending that the States are not likely to raise any obstacles.

Senator Sir William Zeal

- I should think they would not. These mails are their very life's blood. The carriage of them is their work.

Senator HIGGS

- It is the work of the States that the Federal Parliament proposes to do', and I was going to say that I think we ought to do it in a gentlemanly way.

Senator Keating

- Do it in a constitutional way.

Senator HIGGS

- Yes, in a constitutional way. The Postmaster-General would appear to desire that the Federal Government should not be compelled to take the initiative in any legal action that might be necessary. The honorable and learned gentleman wants to force the States.

Senator Sir William Zeal

- Where is the disadvantage in this clause'?

Senator HIGGS

- - The disadvantage is that we may make a number of people throughout Australia consider that the Federal Parliament is taking upon itself too much, when it orders that the principal railway official in any State "shall " do certain things.

Senator Sir William Zeal

- That is what the State Governments order now.

Senator Keating

- But they have their own railways.-

Senator Sir William Zeal

- No, they belong to the particular department.

<page>1224</page>

Senator Playford

- And the Railway department is always sponging upon the Government for money for the carriage of mails.

Senator HIGGS

- There may not be any trouble arising out of this, but I think it would prevent misunderstanding if we altered the terms of clause 17 to provide that the Postmaster-General shall enter into arrangements with the Parliaments of the States to allow this thing to be done. Now, in reference to the question of private railway companies-- r

Senator Drake

- I am going to deal with that by an amendment.

Senator HIGGS

- I would like - the Minister, to note, as no doubt he will, that several of the private railway companies in Queensland have agreed to carry mails over their lines free of cost. That is part of the consideration for a concession that has been given to them to run private railways, and unless something is put into the Bill, perhaps the Federal Postmaster-General would not be able to claim the benefit of that concession. I move-

That the following words be inserted at the beginning of the clause : - " The Postmaster-General shall make arrangements with the Parliaments of the States providing that " - - ,

Senator EWING

(Western Australia.). - I second the amendment, of

Senator Higgs.

I do not think, there can possibly be any difficulty arising out of -the amendment that has been moved. No doubt it is very much more respectful. No doubt it removes any irritation that might be felt at the Federal Parliament dictating to the States a course which is questionable Now, what is the practical difficulty? We ask the Postmaster-General to make arrangements with the' Parliaments of the various States. Would it be possible for the Parliaments of those States to remain unreasonable ? If they did so, the whole of the carriage of their mails would be stopped, and the outcome would be that the people in the various States would get no mails carried.

Senator Sir William Zeal

- It is the very essence of circumlocution and redtape.

Senator EWING

- Might I say, in passing, that I think there" is a great deal in what Senators Drake and Keating have said. Senator Drake has quoted a lengthy decision, which says that all power incident to the carrying out of any duty by a Constitution must be implied. We do not need to go to a legal decision for that dictum. It is in the Constitution Act, and the real question is - is the provision necessary? How can any senator say that, where there is in existence a good roadway or a line of steamers trading from place to place, it is necessary to carry mails by rail? It may be expedient and' desirable and more convenient for the Postmaster-General to carry his mails by rail rather than by steamer, but it could not be argued that it was necessary.

Senator Sir Frederick Sargood

- Practically necessary.

Senator EWING

- It is not practically necessary even. Take the case of the carriage of mails from Bunbury to Perth.

Senator Sir William Zeal

- Where is that ?

<page>1225</page>

Senator EWING

- If the honorable senator does not know where Bunbury is I feel sorry for his knowledge of Australia. It is the place where the man who has ruled Western Australia for so many years was born. Passing from the historical significance of Bunbury, I would say that there are steamers running daily and weekly from Bunbury to Perth. Could it be urged, therefore, that it was necessary for the Postmaster - General to carry his mails over the railway from Bunbury to Perth ? Certainly not necessary, although it might be more ' convenient. Does the case which my honorable friend has quoted, say that the Postmaster-General shall do that which is more convenient. No ; he can only compel that which is necessary. Sub-section (39) of section 51 of the Constitution Act says-

Matters incidental to the execution of any power vested by' this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal judicature, or in any department or officer of the Commonwealth.

Therefore I think the honorable gentleman will see that the case he has cited carries the matter no further than the four corners of the Constitution. Surely it is manifest that there may be many cases in which it is not necessary to carry mails by rail. Therefore I contend that when we are on this very debatable ground, we should approach the States in a more conciliatory fashion than they are approached by this clause,' which says : - "We shall make, you do this, whether you like it or not." As to the practical difficulty - is there a State Parliament that dare refuse to make reasonable terms ? Where can be the danger that the State of Western Australia will refuse to do that which is reasonable for the Postmaster-General ?

Senator Sir William Zeal

- The honorable senator wants his overland railway. .

Senator EWING

- The people of Wwestern Australia would not tolerate it, and the great bulk of the members of the estern Australian Parliament would never for a moment be parties to action on the part of their State which would render the carriage of mails precarious or doubtful.

Senator DRAKE

- I wish to say a few words in reply to the remarks of Senator Ewing, who, I see, is not in the Chamber, before I speak to the amendment. He has taken up the position that we have no right to insist upon this particular means of carrying the mails, so long as we have any other means available. My contention is that for all practical purposes the railways are the only means by which the mails can be carried. It is very true to say that there are roads to most places, but at the present time ordinary travellers will not use the roads ; they must have the railways. As honorable senators know, ever since the reign of Edward I., every effort has been made to facilitate the despatch of mails ; to hasten them in every way ; to keep relays of horses on the roads, in order to insure that there should be no delay, and one good old English word, post-haste, is derived from that period. Every effort has been made from that time by all kinds of means to

accelerate the conveyance of the mails, and it seems an extraordinary thing here in the reign of Edward TIL, to be told that we cannot avail ourselves of the railways in the way proposed by this clause, so long as any other means of transit are available. If an honorable senator wanted to go to Albury to-morrow, it would be of no use to tell him that he could go by road. I believe it would be almost possible for him to go by water. If he were asked how he would proceed to get to Albury he would say "go by rail, there is no other way of going." For all practical purposes that answer would be perfectly correct. There is no other means of getting to Albury for the purpose of conveying mails except by railway. And if we are not able to take our mails over the railway, then practically the mails are so much delayed that it would almost amount to a stoppage. But the authority that has been so much quoted in this debate is dead against the contention of Senator Ewing. His contention, it will be remembered, is that we cannot insist upon having the services of the railway for the carriage of our mails, so long as there is any other means of transit available to us.

Senator Ewing

- Some other reasonable means.

Senator DRAKE

- The view taken by Chief Justice Marshall in the case of *McCulloch v. the State of Maryland*, on which the honorable and learned senator relied, is exactly the other way. He lays it down that we have the choice of means. On page 423 he says : -

The Government, which has a right to do an act, and has imposed on it the duty of performing that act, must, according to the dictates of reason, be allowed to select the means ; and those who contend that it may not select any appropriate means, one particular mode of effecting the object is excepted, take upon themselves the burden of establishing that exception.

Senator Best

- But that judgment is really not in point at the present time, because we have to have regard to the State rights, which are specific so far as the control of railways is concerned.

Senator DRAKE

- It was so in the United States also.

Senator Best

- It was a question of imposing taxation there.

Senator DRAKE

- Chief Justice Marshall lays down a general principle, and the cases which are quoted simply go to establish that principle, that when a power is given to do an act power is also given to use all the necessary means for doing that act or performing a duty.

Senator Ewing

- Our Constitution specifically retains to the State control of not only the working but the construction of railways.

Senator DRAKE

- Yes, and we do not propose to interfere in the slightest degree with either the construction or the control of State railways. All we claim is the right to use them.

Senator PLAYFORD

- When they run a train.

<page>1226</page>

Senator DRAKE

- That is perfectly clear from the terms of the clause. If they run a train we claim the right to put our mails on board and pay them a fair price for the services performed. With regard to the amendment, I should be very sorry indeed if there was anything in the Bill, or anywhere else, calculated to offend the proper sensibilities of any State. But I think there is, and always will be, a very great difficulty in introducing the phrases of polite conversation into an Act of Parliament. In an Act of Parliament we want in the shortest and most concise way to express the intention of its framers. I fail to see, if that is done, how any cause of offence can possibly be given. But I have thrown out a challenge again and again. I have said "if you object to the particular terms that I have used, give me some other terms, always provided that it leaves the intention of the Act clear." In answer perhaps to the challenge I get this amendment by Senator Higgs. But it will destroy the clause altogether if it is put in, whether it were in the original form that the

Postmaster-General is to be empowered to make arrangements with the Parliament, or in the altered form that he shall have power to make arrangements with the executive authority. Let me show how this question is likely to arise in a concrete form. When the railways and postal services were both in the hands of the Government of a State, it was simply a question of the Postmaster-General wanting to give as little as possible, and the Minister of Railways wanting to get as much as possible, and the Cabinet coming down and saying " put in £30,000 or £40,000 or £60,000." But now we are dealing with six States we must, in justice to all of them, see that we are not paying an exorbitant price to any. Suppose a commissioner for railways says he wants £100,000 for the carriage of the mails, and I say I think £75,000 is sufficient. Under this clause, if we cannot agree, the matter goes to arbitration, but still the mails are" being carried. If that provision is not retained, or if the clause is altered as proposed by Senator Higgs, the commissioner for railways can say, " If you do not pay up the £100,000 I shall not carry the mails." Suppose the Postmaster-General sends down the mails, and the railway commissioner goes on carrying them, he will keep on debiting the Federal Government with that £100,000. It is absolutely in his power to fix the amount, and he says, " I fix the amount at £100,000, and you simply must pay it?" How is the clause helped by this amendment? Senator Higgs says that in that case the Postmaster-General is to have power to make arrangements with the Executive authority, that is to say the Postmaster-General goes to the Executive authority, and says, "Your Railway Commissioner wants to charge me £100,000, but I think £75,000 is enough." What is the Executive authority going to do ? It will Stand by its railway commissioner, so that it does not help us a bit.

Senator Sir William Zeal

- There will be a dead-lock.

Senator DRAKE

- There is a dead-lock. Still they will say " We stand by our commissioner and insist on £100,000." I do not mind what terms are used, but I hope that the terms will be as polite as may be, so long as we do not give up the most important position, that we must have the right of saying; that the mails shall be carried. We provide the fairest possible means of fixing the amount of remuneration, but it is not to rest with the railway commissioner, or with the Executive authority in any State to say - "We fix the price and you must pay it, else the mails will not be carried." I cannot support the amendment.

Senator HIGGS.

(Queensland). - I do not think that the argument used by the Postmaster-General carries much weight; for the reason that if, by any mischance a railway/ commissioner is so ill-advised as to do this: kind of thing, any proposal on his part to submit to arbitration would naturally be adopted at once, as provided in the clause. I would ask the Minister whether in the case of a railway commissioner refusing to carry the mails because he is not getting a sufficient price, or in the case of a refusal on his part to go to arbitration, and the consequent irritation and loss to the people of the State,, the Parliament would not immediately rise to the occasion and o impel the railway commissioner to come to terms ?

Senator Glassey

- Parliament may not be in session.

Senator HIGGS

- If the Parliament happened to be in recess, I take it that the Government would act in the interest of the particular State.

Senator Best

- Seeing that the State and the public were suffering.

Senator HIGGS

- The public would be suffering a very great inconvenience and. loss.

Senator Drake

- If they stop the mails;but suppose they keep on carrying the mails, and insist that we pay £100,000 all the time.

<page>1227</page>

Senator HIGGS

- There is nothing to» prevent them doing the same tiling under the clause as printed. If the railway commissioner says - " I shall not go to arbitration," and keeps "on charging the amount until he piles up a big debt against the Commonwealth, what chance has he of. getting paid ?

Senator Drake

- Under that clause he will not have any right at all if he does not go to arbitration.

Senator Best

- The Minister has no power to compel him to go to arbitration.

Senator Playford

- And he has no power to compel the Minister to pay.

Senator HIGGS

- I do not think that if we pass a clause like this it gives this Parliament the power to make the railway official of a State do as it wishes him to do until the State Parliament has agreed that such a thing shall be done. I do not want to take up any more time. We are making very slow progress, and we may as well go to a division. .

Senator Lt Col NEILD

- On the second reading of this Bill I took exception to this 'attempted interference with State rights. I do not imagine that it is necessary to provide against the refusal of any State, to carry mails over its railways, because every State will be interested in the prompt delivery of mails. There is no likelihood of the authorities in any of the States creating difficulties.

Senator Drake

- They' are doing, it already. I mentioned one case of an exorbitant demand.

Senator Lt Col NEILD

- That is perhaps one of those accidents that will occur in the best regulated States as well as in the best households; I doubt seriously whether we have the power to do this.

Senator Walker

- The High Court will settle that.

Senator Lt Col NEILD

.- We do not wish to be passing laws merely to provoke litigation. I find in the 39 articles embodied in section 51 of the Constitution Act that there is a special provision in subsection (32) which gives the Commonwealth control over railways in respect of transport for military purposes. If it had been intended by the framers of the Constitution that this authority should be given over the railways of the different States, it certainly would have been embodied in the Constitution. I go further and say that the fact that military purposes are specifically set down as being a proper authority for the Commonwealth to possess, absolutely as a matter of law excludes the right of the Commonwealth to any other control of the railways.

Senator Charleston

- We are only asking for use.

Senator Lt Col NEILD

.- There is a great difference between use and control. We may have use and not control. But claim that use is a right as to control. A mare may be a horse, but a horse may not be a mare.

Senator Best

- Read the balance of the clause, which says that the Railways Commissioner shall provide facilities.

Senator Lt Col NEILD

- Exactly. In that case we compel. There is a good deal of difference between the two things, as some honorable senators will discover when the need arises for the High Court to determine this matter. I am not going to take up time by repeating what others have said, but I shall vote against the clause if it comes to a division.

Senator PEARCE

- After all that has been said, it is well, perhaps, not to give a silent vote on this question. I intend to support the clause. I think that we have a justification for doing so because sub-section (39) of section 51 says -

Matters incidental to the execution of any power vested by this Constitution- in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the federal judicature, or in any department or officer of the Commonwealth.

This is a matter which is necessarily incidental to the execution of a power vested in the Parliament - a matter of the conveyance of the mails of the Commonwealth.

<page>1228</page>

Senator MCGREGOR

- It is very nearly time that we left law alone and exercised a little bit of common sense. The more legal opinion we have had up to the present time the more confused we poor laymen seem to get. As far as the Senate is concerned, I think that in a short time legal opinion will be considered nonsense. We have one honorable senator getting up and declaring - "We have no power to do this." Another honorable senator from the other side of the House exclaims - "Just look at the latter part of the clause where the States are asked to provide something." The States are asked to provide nothing that the Commonwealth is not willing and does not expect to pay for. To illustrate this I will call attention to clause 63, which compels the masters of vessels to provide lockers. Why should we dare to do this? There is nothing in section 51 of the Constitution providing for that. Why, then, should we do it? The answer is that we are going to pay for it. In this particular matter, too, we are going to pay. Clause 17 makes all the provision that is really necessary and 'it seems to me that some senators have an exalted idea of their position in respect to the several States which they represent.' They have lost sight of the fact that they are here - even although they are called State representatives - as representatives of the Commonwealth of Australia. Their first duty is to consider the rights, requirements, and interests of the Commonwealth, and after that, the necessities of the States which they represent. They are here to see that no one State imposes on another, and this very clause will prevent anything of that kind occurring? Here we have a power vested in the Postmaster-General in connexion with the conveyance of mails. If Western Australia, South Australia, or Queensland likes to become stubborn and refuse to do anything in the matter, would not that be to the injury of all the rest of the States - to the injury of the Commonwealth - and are we to put it within the power of one State to interrupt the whole machinery of government in connexion with postal matters? We ought to give exclusive power, but still we ought to provide that ample payment should be made. In reference to the latter portion of the clause, I would ask what does the expense to which the Railways Commissioner is put in providing conveniences matter, if these things are taken into consideration, either in the arrangements between the Postmaster-General and that officer, or in the arbitration court, which settles the dispute afterwards? I hope honorable senators will lose sight of these very grave State interests and look more to the interests of the Commonwealth, which are the interests of the whole of Australia, and act sensibly by supporting the clause.

Senator STEWART

- I intend to support the Government in this matter. I really cannot see what all the trouble is about. I heard a minute ago that we had too many lawyers in this Chamber. I thought so from the beginning, and every day I am becoming more and more confirmed in that idea. The more members of the legal fraternity we have and the more law, the less common sense we get, as far as I have been able to discover. I think that honorable senators know perfectly well what the legal profession is. If we go to one particular lawyer he will give us a certain opinion-

The CHAIRMAN

- Does the honorable senator think that these remarks are relevant to the clause?

<page>1229</page>

Senator STEWART

- Perhaps they are not, but I was just going to illustrate how legal luminaries shed their light in different ways. So far as I can gather from the Constitution, the complete control of the postal and telegraph systems of the various States have been handed over to the Commonwealth Government. I think that carries with it the right to every necessary facility for administering that special department. Some honorable senators seem to think that the Postmaster-General before he can run his mails through the different States must go to the Governments of those States and say - "Will you allow the Commonwealth Government to use your railways for the carriage of mails through this State?" I say that that is a position which the Commonwealth Government should never be placed in. The Commonwealth Government is supreme in this matter. The States have voluntarily handed over the postal and telegraph departments to their control. They form one of the 39 articles of the confession of faith. I do not anticipate any trouble such as some honorable senators seem to be so much afraid of. Several honorable senators have asked - "How can we enforce this, and how can we enforce that?" I do not know that we can enforce anything. If some of the States had refused to enter the Federation we could not have compelled them to do so. It appears to me that the good faith which exists between the different States of the Commonwealth ought

be sufficient to carry us over any difficulty of this kind, if difficulty there be. I do not anticipate any difficulty except that some of the Railways Commissioners apparently contemplate making a raid on the funds of the Commonwealth. They want to get much more for the carriage of the mails than they have hitherto received. Anything of that kind, I think, should be strenuously resisted. The Constitution gives the Postmaster-General the right to every facility for carrying the mails, subject of course to payment therefor, and that payment is to be settled in case of a difference between the Postmaster-General and any State, by arbitration. The position seems to be this : that the Postmaster-General can command the use all our railways irrespective of price, but the price that shall be paid is either to be a matter of mutual agreement or has to be settled by arbitration. What is all the trouble about ? Some honorable senators seem to think that by inserting the word "shall," we shall hurt the feelings of some people in certain States. Surely we are men, and not children. We intend to carry on the business of the Commonwealth, I imagine, in a common-sense fashion. Every one knows that the people of the Commonwealth will not tolerate for a single moment any interruption in the mail service. The idea that the Railways Commissioner of any State, or any Government even, would take it upon himself or itself to stop the carriage of mails for any reason whatever, seems to me to be utterly preposterous. There is one thing that seems to me of the utmost importance. It is this : that not only should the Commonwealth Government be supreme with regard to the administration of this special department, according to the Constitution, but it should also be supreme according to fact. We have had many different opinions on the question from all sides of the House. We have had legal opinions - the legal effect of this and the legal effect of that. Let us try now to drive the legal aspect of things out of the matter altogether and to apply a little common sense to it.

Senator Drake

- The law is the essence of common sense.

Senator STEWART

- Let us apply a little common sense to the interpretation of the Constitution. Some honorable senators have been threatening us with the High Court. I trust that the Commonwealth Parliament will never permit the High Court to override its decisions. I say we are- supreme here. Of course such a Statement provokes laughter, particularly amongst the lawyers in the Senate.

Senator DE LARGIE

- It is the guardian of the Constitution.

Senator STEWART

- I do not think we should allow the interpretation of the Constitution to pass from our hands to those of Judges. This question is not before the committee but the evil effects of this very thing have been clearly demonstrated in the United States of America. I intend to support the Government, and I trust the Postmaster-General will not retreat a single inch. I trust that he will persist in maintaining the absolute sovereignty of his department so far as the control of our postal and telegraphic system is concerned.

Senator HARNEY

- I will not occupy the time of the committee many minutes. I only rise because it appears to me from the remarks of the last honorable speaker that this is apparently a fight between lawyers and common sense. I may be allowed to say that I consider the definition of law given by Edmund Burke to be the true one - namely, that it is " the crystallization of the common sense of ages." There cannot be the slightest doubt in any one's mind that this is a very useful and very expedient clause. I do not think the difference is in reference to whether the clause in its present form is good or bad. It is a question of whether it is legal or not. At first I was very much impressed by the arguments adduced during the second reading. It did then seem to me that, as we have a written Constitution limiting our powers, and as the railways, except for naval and military purposes, are excluded from those subjects upon which we can pass laws, we were going outside our constitutional rights in doing anything which interfered with the control of the railways other than for naval and military purposes. It also seemed to me that any control is a limitation upon the exercise of rights ; that it is the right of a railway company, or of a railway department, to charge whatever fares they wish, and that therefore it is a limitation upon the exercise of that right to say " You shall charge the rates that are pleasing to me, and the rates that may seem fit to the Treasurer." On further consideration I have been converted from that view. I am perfectly satisfied now that the right here given is one incidental to the carrying out of the postal service. We must clothe the Postmaster-General with all the powers that are necessary, and one of the most immediate powers is the right to control, as it seems

fit, the various carrying instruments throughout the country. I shall therefore vote with the Government for the retention of this clause.

<page>1230</page>

Senator Sir JOHN DOWNER

- There was no subject, I think, at the time when the drafting committee of the Convention were engaged' in drawing up the Bill, that caused more anxiety than the question of whether precise words or general words should be used. It is perfectly clear that our Constitution was framed to a large extent by analogy with the American Constitution, and we came to the conclusion that the broader and more general the words used the greater would be their scope ; that if we once became too specific we should have a loophole left for an ingenious person to creep out of. We therefore assumed that the analogy of the American decisions would be followed, and that broad general words would cover everything. And so we advised the Convention, and so the Convention passed the Constitution in its present form, perfectly satisfied that these words covered everything, whether public railways or private railways or any other means of carriage. We thought, to use the expression of some honorable senators, that it would give the Parliament a general "commandeering" power.

Senator Best

- Private railways?

Senator Sir JOHN DOWNER

- Yes, all of them. The words give Parliament the power - if you please to call it so - the commandeering power. I do not object to the term. The broadest words that could possibly be used are the words which are used, and if they can govern the public railways they can govern private railways. Although at the time of the passing of the American Constitution steam power had not come into effect, and railways were not in existence as now, the principles are eternally the same, whatever the means of carriage may be. To avoid the differentiation we knew might arise from the use of more precise terms we used general terms. The Convention adopted them, on the same understanding, and the Imperial Government passed the Act on the same understanding : that those general words covered everything, and gave the power of commanding every means of locomotion, for the purpose of carrying our mails, that happen to be at our disposal. I am entirely with the Government.

Amendment negatived.

Senator DRAKE

- I propose now to move an amendment which I think will meet the views of those honorable senators who have pointed out that this power should be extended to private railways. I believe there are not very many private railways in the Commonwealth,' but certainly there are some cases in which it would be desirable that the Postmaster-General should have the right to insist upon the carriage of mails if necessary. I therefore move -

That the words - " or the owner, controller, or manager of any railway or tramway in any State," be inserted after the word " State," line 1".

Senator Glassey

- That will include any railway or tramway 1

Senator DRAKE

- Yes.

Senator Sir Frederick Sargood

- Would it not be sufficient to strike out the word " State " ?

Senator DRAKE

- No, because the expression used here is , " the principal railway official."

Senator Best

- I think that is a wrong expression. State railways are not always vested in the principal railway official.

Senator DRAKE

- I think the principal railway official in some title or other has power over the railways.

Amendment agreed to.

Clause as amended agreed to.

Clause 17 -

The Postmaster-General shall pay to the principal railway official of each State such annual sum for the

receipt carriage and delivery of mails and for all facilities provided in connexion therewith as may be agreed upon and in default of agreement as may be settled by arbitration.

Senator DRAKE

- I have an amendment to propose to this clause which is of a similar character to the last. I move - That the words " or the owner, controller, or manager of any railway or tramway in any State as the case may be," be inserted after the word " State," line 2.

Senator HIGGS

- I should like to ask the Postmaster-General what would happen in connexion with the arrangement made by State Parliaments with certain railway companies to carry mails free if we adopted this amendment? Would the adoption of the amendment abrogate that concession?

<page>1231</page>

Senator DRAKE

- That would be a very important element in deciding what would be paid for the carriage of the mails. Where a private company has agreed to carry the mails of the State free, it would, I take it, receive a mere nominal payment. In any case, if that company were not satisfied with a nominal payment, I should think that at arbitration the fact that the company had agreed to carry the mails free would be taken into consideration, and it would not get more than a nominal payment. It is not quite clear to me because that right was reserved under the State Act that the Federal Parliament could insist on the mails being carried free. It would be open for a private company to contend that their contract was to carry the mails of the State free, and they might be able to contend that, owing to federation, the expansion of business, and so on, the mails were heavier than they would have been if federation had not taken place. There may not be much in that, but they could put forward the contention that we should not have power to place ourselves, as it were, in the position of the State, and insist upon the free carriage of mails.

Senator EWING

(Western Australia). Following to its logical conclusion the statement made by the Postmaster-General, that we can compel private individuals to carry the mails of the Government, then we can compel them to carry them on the terms we think fit.

Senator Playford

- Subject to arbitration.

Senator EWING

- This Bill provides for arbitration, but if we have the right to interfere with their mode of carrying on business, and to say - "You shall carry these mails whether you like it or not," be it public company or private individuals, you can say to these individuals - " You shall carry them free," just as you can say - "You shall carry them for reward." I should like to point out to the Senate what it is really doing. The case that my honorable friend has cited says that the Government has the right to the use of the roads for the purpose of carrying the mails, but no case on earth has ever said that the Government can come to me and demand my vehicles for the carriage of the mails. If I have a line from Kalgoorlie to Kanowna, or anywhere else, what power is there under the Constitution for the Commonwealth Parliament to come to me and say, " Carry the mails of" the Government because it is convenient that the Government should have their mails carried by your vehicles"? The Postmaster-General must draw a distinction between the power to use the territory of the State - namely, the roads - for the purpose of carrying mails and the power to compel private individuals to carry mails. Because, if we can say to a railway company, "carry the Commonwealth mails," we can say to the person driving his own trap, "carry the Commonwealth mails." I see no distinction whatever in principle.

There is no doubt that the Commonwealth has power to use the territory of the State and the public roads of the State for the conveyance of its mails in the Post-office, own vehicles, and that is the total extent to which the case cited by my honorable friend goes. But nowhere can he get any authority or case which shows that the Commonwealth Parliament has been given any control over the actions of citizens, and can say to those citizens - " You are travelling in the direction in which we want our mails to go, and you shall carry the mails of this Commonwealth." There is no power contained in the Bill which gives the Postmaster-General any authority to do this, and I think it is extremely unwise for the Senate, or the House of Representatives, to presume to do to individuals and to States that which we have no power to do. Can my honorable friend the Postmaster-General show us that he has power to come to me when

driving a cart along the road from one place to another and say "you shall carry my mails " ?

Senator Playford

- That is not the question before the committee.

The CHAIRMAN

- The committee has approved of the principle contained in clause 16.

Senator EWING

- The question before the committee is the insertion of certain words, and my contention is merely that if you can say to an individual - "Do this thing for me for 6d.," you can say - "do it for me for 6d.," or you can say - "you shall do it; for me for nothing."

Senator DRAKE

- The distinction I make is this, and it seems a perfectly clear one. A man is driving a cart along the road. We do not claim that we can compel him to carry the mails, for the simple reason that we can run our own mail-carts. The reason of this special power is that the railways exercise certain powers which are in the nature of a monopoly, and which prevents a similar service being carried out on those lines. We cannot run a train of our own over the railways, and therefore we claim that those railways shall carry our mails. With regard to the carriage of mails by road, we do not want to commandeer the carts of any one when we can run carts of our own.

<page>1232</page>

Senator DE LARGIE

- In reply to the question raised by Senator Ewing, I think the 31st article in section 51 of the Constitution Act determines the matter. It reads as follows : -

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

Surely a railway is property.

Senator Drake

- We have not taken that power yet.

Senator DE LARGIE

- I think that gives the Postmaster-General the necessary power. As regards private railways, I understand that in return for the concession given to them they agree to carry the mails. I was under the impression that when the Commonwealth took over the Postal department it took over those rights. If that is so, I do not see that there is any room for a difference of opinion on the matter. I hold that the Commonwealth has all the necessary rights and privileges handed over to them when carrying out the work of the department. Therefore, as far as I can see, we are only wasting time and debating a thing which every one sees very clearly.

Senator MCGREGOR

- I was going to say that Senator Ewing has given an exhibition in a very earnest manner of some more legal nonsense. He has declared that no Government or no Constitution in the world ever set down that the postal or other authorities could order a man who was driving his own vehicle to carry mails.

Senator Ewing

- I never said that. I said ours did not do it,

Senator MCGREGOR

- So as to answer what Senator Ewing has been talking about we will say that ours is the only Constitution that does not do it. But I would point out to Senator Ewing that we are discussing the advisableness of providing for fair and just treatment in respect to payments. I want to point out the difference between a railway and a private vehicle. Senator Ewing knows very well that every one of these private railways that have been constructed are running under the authority of an Act of Parliament, but he might have 50 vehicles running on a public road, and he would not require to have an Act of Parliament unless it was " A Width of Tire Act " or something of that description. He would not be controlled as to the number of vehicles he might use.

Senator Ewing

- There are plenty of railways built without Act of Parliament in Western Australia.

Senator MCGREGOR

- Concessions are granted for the construction of little bits of tin-pot railways for carting firewood, but that

is in the lease. The question is if the Government gave the exclusive right to Senator Ewing to run his traps on the road, then it would be necessary for the Postmaster-General to take the powers that have already been taken in this Bill, and I am sure Senator Ewing would not object to the amendment we have heard proposed that makes provision for his payment. I hope the legal profession will allow this to pass. Amendment agreed to.

Senator HIGGS

(Queensland). - I would like to ask the Postmaster-General what provision he has made with regard to the carrying out of arbitration

1

It struck me that something more was necessary than a simple mention of the word arbitration, and perhaps it would be as well to put in the clause that arbitration shall be in accordance' with the laws of the State.

Senator Harney

- That follows as a matter of course". '

Senator HIGGS

- I do not think that it follows as a matter of course.

Senator Drake

- In nearly all of the States they have laws with regard to arbitration. It may be necessary, I do not know that it will, for the Commonwealth to have its "own arbitration laws in- the course of time. In the meanwhile I .think this provision is sufficient.

Senator HIGGS

- I do not want to raise any debate about that point ; but inasmuch as several private railway companies have obtained concessions from the Governments of certain States, and have agreed to cany His Majesty's mails free of charge, I move -

That the following words be added to the clause: - ' ' Provided that no payment shall be made to any owner controller or manager of any private railway or tramway who in accordance with the laws of a State has agreed to cany His Majesty's mails free of charge. "

<page>1233</page>

Senator DRAKE

- I have some doubt whether we can do that. In any case, it seems to me that the term "-His Majesty's mails " is open to a misconstruction. The same term may have been used in the State Act, but the mails referred to are the State and not Federal mails. The Act of Parliament provides that they shall cany Her Majesty's mails free, which would mean the State mails. If w? use the words " His Majesty's mails" in this Bill, it means the mails of the Commonwealth, and the owner of the private railway might very well say - " I did not agree at the time I got these powers from Parliament, and made this railway, to carry the Commonwealth mails."

Senator Higgs

- He agreed to carry Her Majesty's mails.

Senator DRAKE

- That was the State mails.

Senator Playford

- It would be the same mails.

Senator DRAKE

- It might or might not be. He might argue that since federation the mails had become more heavy, and that that was not what he contracted to do. I think the better way is to leave the clause as it stands, because if a contract of that character has been made with the State to carry the mails free, then a mere nominal payment, I should say, would be sufficient. If the contractor is not satisfied with that, and wants to arbitrate, I should think any sensible men acting as arbitrators would say - " You agreed to cany the mails of the State at the time you got your powers, and it is no very great hardship now for you to be required to carry His Majesty's mails for the Commonwealth at a small remuneration."

Senator HIGGS

(Queensland). - I would like to point out that these private railway companies in all cases agreed to carry .His Majesty's mails at that particular time, and having received a concession from the State, they agreed

to carry the mails for all time. There would have been the same increase in the mails of a State without federation as there will be with it. . But undoubtedly the private railway owners expected that Her Majesty's mails would increase as time went on. What I object to is opening the door to any private railway company to consider that it is entitled to get a payment from the Commonwealth for carrying the mails, and perhaps dragging the case into the arbitration court and putting the Federal Government to considerable expense. I am sure that the terms used in private railway Acts are the terms which I have adopted in my amendment, inasmuch as when Her Majesty passed away His Majesty took her place.

Senator PLAYFORD

- I can tell the Postmaster-General that I have not very much faith in arbitration. My experience of arbitration is that it is against the Government. The arbitrator for a company always stretches his conscience to the utmost of his ability in favour of his client, and the arbitrator for the Government is generally told to act fairly, and he does not stretch his conscience in the other direction very much, and when the umpire is called in he Says "Split the difference," but in the splitting of the difference the Government always gets the worst of it. Under the conditions mentioned by Senator Higgs there is no doubt that these companies agreed to carry Her Majesty's mails, and had a concession given to them on the faith that they were going to perform some service to the State. If anybody is to be paid it should be the State that granted them the concession, and certainly not those who made the railway. They agreed to carry Her Majesty's mails for all time, I understand, and in many cases free. The Government gave them certain rights and privileges, and took as part quid pro quo the right of sending their mails free of charge ; and if any one can come upon the Commonwealth for the cost of carrying these mails it is the State Government, and, certainly not those individuals. I would certainly a great deal sooner pass the amendment as proposed by Senator Higgs than leave it to arbitration, because arbitration certainly means that the Commonwealth will get the worst of it.

<page>1234</page>

Senator FRASER

- I agree that with companies that agreed to carry mails free for the privilege of building a railway, it is right enough; but there will be great changes, and there are changes going on now whereby lines that are now only carrying a bag or two may carry tons upon tons of mails. In my mind's eye I can see great changes taking place within a period of years in the way in which mails are to be carried across this continent. It would hardly be fair to make a private company carry tons and tons of mails where now they carry only perhaps a couple of small bags. It is not right to make a hard and fast rule. I agree with the principle of the .amendment, but I hold that if we make a hard and fast rule we may unwittingly be doing an injury.

Senator MCGREGOR

(South Australia). - I like to see the reasonableness of

Senator Fraser,

but he has made a very great mistake to my way of thinking. He says that some of these companies that gob a concession from the State Governments, and agreed to carry the mails for nothing, only contemplated carrying a bag or two, but now it might have tons and tons of mails to carry. Does not every honorable senator know that when any such company has tons and tons of mails to carry instead of a bag or two, its profits have gone up 100 per cent., and it is reaping 100 times the advantage it reaped when it was. only carrying a bag or two of mails?

Senator Fraser

said that we may have tons and tons of mails going across the continent.

Senator Fraser

- Very likely, if we go across Queensland to the Gulf.

Senator MCGREGOR

- Not one of these lines is constructed, and whenever the question of constructing a line that will be of a trans-continental character arises, if it is done on the time-payment system, or the land-grant system, or any other system that I do not approve of, we shall find that the promoters will take very good care, if they are likely to have nothing but mails to carry, that they shall be very well paid for it.

Senator Drake

- But that is not the point. The point is whether this private company could get it.

Senator McGREGOR

- I am coming to the point. The point that Senator Drake took was that those companies which got a concession from the State in the past only agreed to carry the State mails.

Senator Fraser

- That is true.

Senator McGREGOR

- I agree with that ; but what are they going to carry suppose this amendment is made? They are not going to carry any mails through their State into another State.

Senator Fraser

- Mails may be diverted from their present routes to their route.

Senator McGREGOR

- I have been in a good many places and seen a good many of these railways, but I know that not one of them is of an Inter-State character. They are all railways run from a place to some mining settlement or something of that description, and if there never had been a federation the same likelihood of development or retrogression would have been possible as there is now. Some of these mining establishments will go on and prosper ; some of them will retrograde ; but that will have nothing to do with the Commonwealth. As these lines are in a particular State, and will only have to carry State mails between certain localities in that State, then where does the injustice of the amendment come in? And as regards the increase of the mail matter, I consider that the company can well afford to carry an increased quantity, because that would be the greatest sign of prosperity.

Senator DRAKE

- Senator McGregor has not met the contention of Senator Fraser. Of course his idea is that these private railways are all small railways into some mining community, and that the mails they will be called upon to carry will only be increased by the development of that particular district. That is not so in every case I can assure him. What Senator Fraser had in his mind, and what I think Senator Higgs had in his mind, is a particular private railway in the north of Queensland". What Senator Fraser is contemplating is the possibility at some future time of the Federal Government making an arrangement to continue that line perhaps to the Gulf, and thereby making this section, which is a private line and simply used now for mining purposes a section of a trunk line.

Senator McGregor

- But they will buy it back themselves.

Senator DRAKE

- They might. The contention is that supposing that happened we should be sending the mails of half the continent over this private railway, and we have actually debarred ourselves from making them any compensation for carrying mails that are of a purely federal character.

Senator Fraser

- That is my point exactly.

Senator DRAKE

- That point has not been met.

Senator McGREGOR

(South Australia). - Whenever the Commonwealth or any State continue any private line for a great distance, they are not only giving it an increased quantity of mail matter to carry, but a hundred times the traffic over the line, and that is where the parties will get a benefit. The concession that was granted to them by the State, and what they give the State in return, the Commonwealth has a right to. As

Senator Playford

has said, if any one has a right to a return for a concession of that description it is the State which gave the concession, not the company which got the concession for something which they considered of some value, else they would never have constructed the railway.

<page>1235</page>

Senator HARNEY

- I think that the private railway companies referred to are entitled to every reasonable consideration. The question to me seems to be this, these companies have agreed to carry the mails free as a return for the concession they got. An Act of Parliament is now passed which does not of necessity increase the mails,

but changes the ownership of the mail service. And are these companies to be released from their contract merely because the contracting party is given another name? That is -what it seems to me to come to. While I am therefore of opinion that the companies ought not to be allowed the opportunity of obtaining payment for doing that which they originally agreed to do for nothing, still it seems to me that to interfere with them in the way which is suggested by the amendment would be very dangerous. The concession that was given to these companies was to carry the State mails free. If there are no State mails to carry henceforward, the legal position clearly is that they are released from that portion of the contract. There is no justice in that, I admit ; but there may be a legal difficulty. I therefore think that what has been said by Senator Drake is the proper way of dealing with it - to allow the arbitration clause to deal with it. No doubt it is subject to this difficulty - that if we leave it entirely to be determined by arbitration, the lawyer who goes before the arbitration board will say - "You must not take into account when determining the amount of money to be paid the fact that these companies agreed to carry the mails free. You must not take that into account, because the amount to be paid is to be determined by arbitration, and it is not relevant to that inquiry to show that this particular company had agreed to carry the State mails free." Therefore I think that to leave it to arbitration alone would not meet the end which Senator Drake has in view. I think we might provide that the arbitrator should take into consideration existing contracts in determining the amount to be paid. That would really effect the same purpose as Senator Higgs has in view, with the justice of which I entirely agree.

Senator Sir WILLIAM ZEAL

- I suggest particularly to Senator Higgs that he should give the Postmaster-General the details of his proposed clause, and that Senator Drake should undertake to consider this matter hereafter. I say this in all good faith, because if Senator Higgs can make out a case I am prepared to support him. But- we have been discussing this Bill from half -past 2 o'clock till 9 o'clock, and we have only dealt with a few of its clauses. If legislation is to proceed at the same rate we shall not break up for the next two or three years.

Senator HIGGS

(Queensland). - I do not agree with the proposal that this question should be considered hereafter, especially when we have spent so long in arriving at our present state of mind. I have here a volume containing the Acts passed by the Queensland Parliament last year. There is, for example, the Callide Creek Railway Act. The company obtained certain privileges and concessions which some of us thought were worth a considerable sum. Clause 32, of that Act states that the company shall carry upon its railway free of charge and with reasonable despatch all such persons and mails as the commissioner from time to time requires to be conveyed upon the public service, and shall allow to all members of the several Parliaments of Australia the same privileges of travelling over the said railway free, as are enjoyed by them on other railways. The same clause appears in the Glasford Creek Tramway Act, and also in the Mount Garnet Company's Railway Act. If we do not insert a provision at the end of the clause prohibiting a company from getting any payment for the carriage of mails they will make a charge, and this charge, I think, will be settled against the Government. If honorable senators had been in the Queensland Parliament at the time, they would have seen a very powerful opposition contending for days against giving these private railway companies power to construct railways at all. The provision I have mentioned was one of the several advantages advocated by the promoters of these lines as a reason why we should abandon the principle of State ownership of railways. I hope the Senate will carry the amendment.

Senator HARNEY

(Western Australia). - I shall propose to vary the form of Senator Higgs'

proposed amendment by making it read as follows : -

That the following words be added to the clause : - 'Provided always that in determining such annual sum the arbitrator shall take into account existing contracts.'

Senator Playford

- Our contention is that no arbitration is required.

<page>1236</page>

Senator PEARCE

- I would point out that there is one fatal flaw in Senator Harney's proposal. . The question of a mail

contract is a yearly one, and, in consequence, the sub-clause which he has moved would only have effect for the first year. After that time we would have to make a fresh contract.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 18-

The Postmaster-General may arrange or contract with any local governing body or person applying to him to establish or provide any additional facilities (postal, or other) for the contribution by such body or person towards the expense of establishing or providing such facilities or to indemnify the Postmaster-General against any loss he may sustain thereby.

Senator DRAKE

- It was pointed out by one or two senators, including Senator Sir Frederick Sargood, that it would be desirable to give power in this clause to make an arrangement with a State as well. I agree with that, and 'I think it is the feeling of the Senate generally. Instead of inserting, as has been suggested, the word "State," I propose to effect an alteration by inserting, at the beginning of the clause the words "The Governor-General may arrange with any State and." After consultation I have come to the conclusion . that the Governor-General is the proper channel of communication between the Federal Government and the States for the purpose of 'making such an arrangement. The Postmaster-General may be left to arrange with any local governing body, but the Governor-General should have the power of arranging with a State. I therefore move -

That the following words be inserted at the, beginning of the clause: - "The Governor-General may arrange with any State and "

Amendment agreed to.

Senator DRAKE

- As a consequential amendment, I move -

That the words "to indemnify" in line 7 be omitted, with a view to insert in lieu thereof the words "for indemnifying."

Amendment agreed to.

Clause, as amended, agreed to.

Clause 19 -

The Governor-General may fix the rates of. postage to be paid upon postal articles and the charges for the transmission and delivery of telegrams or other communications by telegraph, and all rates and charges so fixed shall upon publication in the Gazette have the force of law.

Schedules of such rates and fees and of alterations of the same shall be laid before both Houses of the Parliament within fourteen days- after the making thereof if the Parliament be then sitting, or if not then within fourteen days after the next meeting of the Parliament.

All such rates and fees shall be paid to such person at such place and in such manner as may be prescribed, and in case of refusal or neglect of payment of any such rates and fees or any part thereof on demand to the person appointed to receive the same, such person may sue for and recover the same in any court of competent jurisdiction.

Senator DRAKE

- I move -

That the words in sub-clause (1), "and all rates and charges so fixed shall upon publication in the Gazette have the force of law " be omitted.

Senator Sir FREDERICK SARGOOD

- I have a prior- amendment. In the first line it says that the Governor-General may fix the rates of postage to be paid upon postal articles, &c. Sub-clause (2) says-

Schedules of such rates and fees and of alterations of the same shall be laid before' both Houses of Parliament, &c.

And clause. 91 refers to regulations. I think it is desirable to have something like uniformity, in this matter.

I move -

That the word "fix," in line 1, be omitted, with a view to inserting in lieu thereof the words "make regulations fixing."

Senator Drake

- I would like Senator Sir Frederick Sargood to carefully read the amendments I have submitted. I propose to make alterations in clause 91. If the amendment which I propose is made in clause 19 it will not be necessary to make regulations fixing the rate.

Senator Sir FREDERICK SARGOOD

- In clause 91 regulations are employed for quite a number of tilings. The word "schedules" in clause 19 is, I think, a misprint. " Regulations " is the term employed for certain purposes in Victoria. The Governor-General in Council would make regulations for certain purposes, and then we provide that these regulations shall be laid before the Houses of Parliament.

<page>1237</page>

Senator DRAKE

- I cannot see anything wrong with it. If we call this a regulation, the question arises as to what power we have to make regulations. The only power to make regulations is contained in clause 91. I propose that the fixing of rates shall not be done by regulation. The Governor-General can fix the rates. The rates, when fixed, are embodied in a schedule, and the schedule is laid upon the table of the House.

Senator Sir Frederick Sargood

- I do not mean to say that you cannot do it, but I do say that it is not the usual way.

Senator Keating

- It is taken from the Victorian Post Office Act.

Senator DRAKE

- I have not a copy of the Act here.

Senator Sir Frederick Sargood

- There is a schedule to an Act.

Senator DAWSON

- It does not make any difference either way.

Senator DRAKE

- It may make a good deal of difference. At all events, it is desirable that we should have uniformity in our language, which is what Senator Sir Frederick Sargood desires. I should hesitate to insert the word "regulation" in this clause if we were not dealing with the matter also in clause 91. If we deal here comprehensively and finally with the subject .of rates, then there is no necessity whatever to insert any reference to it in clause 91.

Senator MCGREGOR

- I think we ought to do this upon commercial lines. I believe that Senator Sir Frederick Sargood will agree with that. I am sure if he were fixing prices he would fix a schedule, of prices. I think that is commercial, and consequently commercial lines would come in very well.

Senator Sir JOSIAH SYMON

- The point is as to how the rate should be fixed. I understand that under clause 91 rates of a certain kind are fixed by regulation, and it would be well to have uniformity. If before the word " fix " the words "by regulation" were inserted it would really be done by regulation. Then in sub-clause (2), instead of saying " schedule of such rates " the use of the words "the regulations fixing such fees" would carry out what we desire. " Schedule " is rather an inappropriate expression.

Senator Drake

- I have always understood the word "schedule" to mean a document that is attached.to something.

Senator Sir JOSIAH SYMON

- I think the words I have suggested would fit in all right.

Senator DRAKE

- The expression used in section 98 of the Victorian Post-office Act 1890 is just the same as we have here -

The Governor in Council may from time to time fix the amount of fees, rates, or dues -

In this Bill we provide that the Governor-

General may fix the rates. Section 9S of the Victorian Postal Act provides -

The Governor in Council may from time to time fix the amount of fees, rates, or dues to be demanded or received for the transmission or conveyance of any despatch, message, or communication by means of any such line of telegraphic communication, and for the due delivery thereof respectively, and for copies

of any such despatch, message, or communication, and may make, alter, and repeal rules and regulations for the transmission and conveyance of all despatches, messages, or communications by means of any such line, and for the payment of such fees, rates, and dues and generally for the conduct, management, working, and maintenance of any such line of communication. A scale of .all such fees, rates, and dues, and a copy of every such rule or regulation, shall be published in the Government Gazette. . . .

Senator Sir Josiah Symon

- That anticipates that the Governor will do so by regulation.

Senator DRAKE

- No, the regulation is for the transmission and conveyance of mails. He fixes the rates, and then when we get a bit further on we find that the scale of such fees, rates, and 'dues, and a copy of such rule or regulation relating to the conveyance and transmission of mails, shall be published in the Gazette.

Senator Sir Josiah Symon

- It uses the word "scale" instead of "schedule."

Senator DRAKE

- Perhaps the word "scale" is better. I have no objection to. the substitution of the word "scale" for "schedule."

Senator Sir Frederick Sargood

- How will the honorable and learned senator do it 1 By striking out the word " fix " and inserting the word "scale?"

<page>1238</page>

Senator DRAKE

- I think unless Senator Sir Frederick Sargood is very anxious to make the alteration we might stick to the phraseology of the Victorian Act.

Senator Sir FREDERICK

SARGOOD (Victoria).- I do not like to oppose the Postmaster-General, but I am very anxious that whatever we send from the Senate shall stand examination in another place. That is really why I would strongly urge the Senate to adopt my suggestion. It has always appeared to me to be the usual plan to state that the Governor in Council may pass regulations, may make regulations for so and so, and then to provide subsequently that these regulations shall be laid upon the table of the House.

Senator DRAKE

- To my mind there is a vital objection to that, and I think that we might very well follow the Victorian practice. The objection is that if we use the term regulation we must turn to the Act to find out what is the power given to us to make regulations. We find on turning to part 5 which deals with regulations that - All such regulations and alterations thereof shall be laid before both Houses of the Parliament within fourteen days after the making thereof if the Parliament be then sitting or if not within fourteen da3's after ((he next meeting of the Parliament.

That is the provision which is made with regard to regulations. What we are doing now is fixing the rate of postage, and instead of making it a regulation subject to the same conditions as are required in a case of regulations, we have put it thus. That is the reason why I want to make it clear now that it is not a regulation within the meaning of the Act. Under clause 19 we prescribe exactly the procedure that must be taken, for the reason that it is not going to be a regulation within the meaning of the Act. ..Part 5, clause 91, prescribes what is to be done in the case of regulations. If we were to adopt exactly the same course in regard to rates as we adopt in regard to other regulations, then it would not be necessary, to say anything about rates being laid upon the table of the House for a certain time and becoming law, if no objection be raised by one House or the other.. We prescribe the particular method of dealing with the question of rates.

Senator Sir Frederick Sargood

- Very well.

Senator. Sir JOSIAH

SYMON (South Australia). - In reference to regulations framed under section 91, it is not intended that they shall not become law until after they have been laid before Parliament? The Government intends these to have operative effect as soon as they have been published in the

Gazette.

Senator Drake

- Yes.

Senator Sir JOSIAH SYMON

- Then in that case it would be clearly inappropriate to adopt the course suggested.

Amendment by leave withdrawn. '

The CHAIRMAN

- The question before the committee now is the amendment moved by Senator Drake.

Senator Pearce

- Senator Drake intends to omit certain words from the clause.

Is it the honorable and learned senator's intention to insert the words in another clause ? If they are not ; there is no force of law to be given to them.

<page>1239</page>

Senator DRAKE

- Has not the honorable senator got a copy of the amendments ? They have been circulated. I will read the amendments as they have been printed, so that the Senate may see what will be their effect. I propose to leave out the words I mentioned, and then to substitute "scale" for " schedule " and "charges" for "fees." Then in sub-clause (2) I propose to insert after the word " Parliament," line 12 -

And if either of the said Houses does not within fourteen days after such scales have been so laid before it, resolve that such rates and fees or any of them ought not to come into force, then such rates and fees shall, when published in the Gazette, have the force of law.

Of course I shall alter the words " fees " to "charges." Then. I propose, when we come to clause 91, to leave out from that clause all references to rates and charges.

Amendment agreed to.

Amendment (by Senator Drake) proposed -

That the word" schedules," line 7, be omitted, with a view to insert in lieu thereof the words " A scale."

Senator MCGREGOR

(South Australia). - I should like either

Senator Drake,

or some other honorable senator who has a preference for this " scaley " term, to tell us of its advantages. I do not like it. I think the word " schedule " is most appropriate. We hear of schedules of prices, and schedules of this thing and the other, but we never hear of a scale without making us shiver - at least it makes any one shiver who has anything to do with growing oranges, or citrus fruits of some kind. Without some very good reason, we should not make this alteration. When we make an amendment it should be to make an improvement, and if no one can show that the word "scale" is an improvement on "schedule," then, of course, we should not make the alteration. No one has* done so, and I think that " schedule " is the most commercial term to use.

Amendment agreed to.

Amendment (by Senator Drake) agreed to-

That the word "fees," lines 7, 13, and 16, be omitted, with a view to insert in lieu thereof the word "charges."

Senator DRAKE

- I move -

That, after the word" Parliament," line 12, the following words be inserted: - ' ' And if either of the said Houses does not, within fourteen days after such scales have been so laid before it, resolve that such rates and charges or any of them ought not to come into force then such rates and charges shall, when published in the Gazette, have the force of law. "

Senator Sir JOSIAH

SYMON (South Australia). - I would suggest to the Postmaster-General a much shorter way of doing this. Instead of inserting the words proposed by him after the word " Parliament," I think it would be better to add at the end of the sub-clause (2) the -words -

And shall after the expiration of such fourteen days, and not before, have, the force of law.

Senator Drake

- It would make no provision for Parliament disapproving of them.

Senator Sir JOSIAH SYMON

- -Yes; Parliament could reject them. If Parliament passed a resolution that they should not become law, that would end the matter. However, I only make the suggestion.

Amendment agreed to.

Clause as amended agreed to.

Clause 20 agreed to.

Clause 21 -

Apostage of one penny shall be charged on letters not exceeding one half -ounce in weight forwarded by or addressed to seamen on actual service in the King's Navy, or in the Marine Defence Force of the Commonwealth,, or any British possession, or to a non-commissioned officer or man on actual service in the King's' Regular Forces, or in the Permanent Land Force of the Commonwealth-, or any British possession.

Provided that a letter forwarded by any such person shall not be transmitted or delivered at that charge unless it bears on its face the name of the writer and his class or. description in his vessel, regiment, corps, or detachment, and the signature of the officer having command of the vessel regiment, corps, or detachment :

Provided also that a letter addressed to any such person shall not be transmitted or delivered at that charge unless it bears on its face the name of the vessel, regiment, corps, or detachment to which the person to whom it is addressed belongs. 2, This section shall not apply to letters forwarded by or addressed to a commissioned or warrant officer in the Land or Marine Forces or a midshipman in the Marine Forces.

Senator Sir FREDERICK SARGOOD

- In this clause it is provided that seamen shall have certain privileges in regard to postage, and as far as the land service is concerned, that is extended to noncommissioned officers and men. The petty officer is in the same position as a non-commissioned officer in the land service, and I presume it is intended to give the same convenience to the same class of men at sea as to those in the land service. Therefore, the word " seaman" should be struck out, with a view to inserting the words " any petty officer or seaman " ; then both ranks would be on exactly the same footing in both branches of the service.

Senator DRAKE

- The only objection that I can urge to altering this clause is that I believe it is a clause which is to be found in the British Postal Act, and I think in nearly all the Acts in His Majesty's dominions. I was just looking for it in the Victorian Act, but do not see it at the moment. I have no doubt it is there. The object, of course, is to insure that these letters shall be carried at a uniform charge to sailors and soldiers wherever they may be in British dominions, and it is desirable, in order to insure uniformity, that the clauses shall be identically the same in each of the Acts.

Senator Sir Frederick Sargood

- You say that this is word for word taken from the Imperial Act 1

Senator DRAKE

- I feel sure it is in the Imperial Act, and I think it is in the Acts of all the States.

Senator Best

- It is quoted here as being in the Queensland Act.

Senator DRAKE

- That, I believe, is taken from the British Act.

Senator Sir Frederick Sargood

- It seems strange that the same ranks should not be put upon an equality in both branches of the service.

Senator DRAKE

- Of course, Senator Sir Frederick Sargood will see that it is desirable, if this is taken from the British Act, that we should have exactly the same phraseology.

Senator Sir Frederick

Sargood. Certainly, I quite agree with the Minister. Will he look into the matter ?

<page>1240</page>

Senator DRAKE

- I find the clause is not identical with the section in the Victorian Act. It is different in its language altogether. That Act says--

Inland and foreign letters not exceeding one half -ounce in weight, addressed to, or forwarded by, any seaman on actual service in Her Majesty's navy, or by any sergeant, corporal, drummer, trumpeter, fifer, a private soldier on active service in Her Majesty's regular forces, militia, fencible, regiments, or royal marines shall be charged a sum of one penny in lieu of the postage hereinbefore mentioned.

I am not sure whether the term " seamen " would comprehend " petty officer."

Senator Sir Frederick Sargood

- That might include " soldier."

Senator DRAKE

- There might be a different practice in the army to what there is in the navy.

Clause agreed to.

Clauses 22 to 24 agreed to.

Clause 25 -

It shall not be necessary to prepay the postage upon letters or packets containing only returns of births, baptisms, marriages, and deaths transmitted in compliance with the provisions of the law in that behalf by ministers of religion, or other persons whose duty it is to transmit such returns to any officer appointed to receive the same, if on the outside thereof it is stated that they contain such returns only, and such statement is signed by the person transmitting the same, but the postage thereon at prepaid rates shall be paid by the said officer on delivery of such letters or packets.

Senator Sir FREDERICK SARGOOD

- I received a letter to-day from a gentleman representing a municipal association, asking that this clause may be postponed, inasmuch as they intend to wait upon the Minister in regard to it. If the honorable gentleman has no objection, I hope he will postpone the clause.

Senator Drake

- Certainly.

Clause postponed.

Clause 26 -

Any publication coming within the following description shall, for the purposes of this Act, be deemed a newspaper, that is to say any publication known and recognised as a newspaper in the generally accepted sense of the word which consists wholly or principally of political or other news or of articles relating thereto, or to other current topics with or without advertisements and printed for sale, provided - that it is printed and published within the Commonwealth ;

that it is published in numbers at intervals not exceeding seven days ;

that the full title and date of publication be printed at the top of the first page, and the whole or part of the title and date at the top of every subsequent page.

The following shall, for the purposes of this

Act, be deemed a supplement to a newspaper, that is to say, a publication consisting wholly or in part of such matter as aforesaid, or consisting wholly or in part of engravings, prints or lithographs illustrative of articles in such newspaper or supplement, provided that no such supplement shall consist of only one advertisement, placard, or circular, and that every such supplement be enclosed in every copy or issue of the paper of which it forms the supplement, and in every case be printed on a sheet or sheets of paper of similar size to and published with such newspaper, and having the title and date of publication of the newspaper printed at the top of every page or at the top of every sheet or side on which any such matter appears :

Provided that the limitation as to size, shall not apply to coloured supplements or engravings if not of convenient form or size.

Senator STANFORTH SMITH

- I move -

That in paragraph (b) the words "seven days" be omitted, with a view to insert in lieu thereof the words "one calendar month."

I think the practice which obtains in all the States, including Victoria, with regard to papers is that they are

considered papers if they are published at intervals not exceeding one month. I can see no logical reason why that period should be diminished to seven days, and I think it would be better to have it fixed at one calendar month. Many of the monthly periodicals I think, from an educational point of view, are even more valuable than the daily papers.

Senator Glassey

- Hear, hear. Take the Review of Reviews, for instance, or the mining journals.

Senator STANFORTH SMITH

- The wording of this clause is more stringent than the New South Wales Act in regard to what are papers, and I think we might at least alter the term " seven days " to " one calendar month," so that magazines may be placed on the same footing as ordinary newspapers.

Senator MCGREGOR

- I was about to call the attention of the Senate to the same difficulty, and I therefore rise to second the amendment. I think the old custom that has been general throughout the State should still be maintained, and for the same reason as the mover I hope the amendment will be agreed to. It will not affect the revenue of the Postal department to an enormous extent, and I think it is a benefit which, if we possibly can, we ought to confer on the people.

Senator CHARLESTON

- I intended to move an amendment that would precede Senator Smith's ; that is in lines 40 and 41 to strike out the word "newspaper," and insert "journal." That would cover a wider field, and such publications as are really educational, and are of extreme value to many who are living in the country, would be able to come under the clause.

<page>1241</page>

Senator Harney

- " Journal " is worse, because it implies " daily."

Senator CHARLESTON

- I thought that the word "newspaper" would have a contracted meaning, and I was desirous of giving the clause a broader interpretation. Of course, if the word " journal " will have a narrower meaning, I will withdraw that. What we are really desirous about is that the people, shall have an opportunity of getting these journals, such as The Review ofReviews, and a number of . mining journals, which are really educational, and which convey to the people throughout the Commonwealth a large amount of information on political, social, and educational matters, and also on matters respecting the various trades. I know some of the journals appeal to only one section of the community, but I certainly think that that section should have the same privileges as other sections, and I see no reason why these journals should not be carried in like manner as newspapers.

Senator Glassey

- Leave the clause as it is. The date will cover everything.

Senator CHARLESTON

- If honorable senators think that the Postmaster-General should decide on what is a newspaper, and that these journals would be included, then I would be quite prepared to give way, but I am extremely anxious that there shall be no mistake as to the power of the Postmaster-General to decide what shall be a newspaper - that there shall be so clear an instruction to him that such publications as I have mentioned shall come under the heading of newspapers.

Senator BEST

- I have very great pleasure in supporting the amendment submitted by Senator Smith, and I think, on reflection, that Senator Charleston will find that the amendment of Senator Smith will cover what he is desirous of achieving. The insertion of the words "or publication" would be rather too wide, and probably would jeopardize the more comprehensive and reasonable amendment submitted by Senator Smith. I am aware that representations have been made to other senators that a large number of journals which have hitherto been regarded as newspapers are going' to be most seriously penalized by virtue of this clause. The clause defines in well known terms what a newspaper is ; and the law of this, and I believe the other States, has been, that if they were published within one calendar month they would come within the definition of a newspaper. A very large amount of capital has been invested, having regard to that particular definition, and the various newspapers referred to are journals which enjoy a very large

circulation and a very considerable amount of popularity. One has been mentioned - The Review of Reviews.

Senator Sir Josiah Symon

- Surely the honorable senator does not call that a newspaper ?

Senator BEST

- Hitherto it has been regarded as a newspaper. Like a large number of other journals it has entered into its contracts with its various subscribers on the basis of the prevailing law, and naturally it comes upon them with very great surprise to have this proposal made for an alteration of the definition which would penalize them probably to three times the extent of the postage which they are now obliged to pay., In the Commonwealth there are about 200* publications which would be most seriously affected by this clause, and penalized in the direction to which I have referred. Having regard to the fact that the law has acted very satisfactorily in the past, and to the fact that each of these journals has, as the Parliament should recognise, a degree of vested interests, it does seem to be a somewhat sweeping provision, and, so far as I can see, unjustified. I do not think there is any virtue in seven days. One calendar month has been the recognised period for a very long time, and as vested interests have grown up under these local conditions I hope that the Minister will see his way to accept the amendment, which certainly appears to me to be a reasonable one, and will avoid an injustice being done to many popular journals.

Senator DRAKE

- It is true that one month has been the term in the Act in all the States ; but recently, for reasons I believe that have commended themselves apparently to the postal authorities in Great Britain, the term has been altered from one month to seven days. So that in this matter we are simply following them. I hope, I may presume, that they had good reasons for making the change.

Senator Best

- What are the Minister's ' reasons for it?

<page>1242</page>

Senator DRAKE

- I am just, going to state my reasons. We have been accustomed to fixing a very low rate indeed for newspapers; in fact, some of the States carry their newspapers for nothing. A newspaper has to come within this definition, and has to be published within a period not exceeding seven days. It will be generally admitted that the journal that fills the ordinary idea of a newspaper is one that is published at intervals not exceeding seven days. When we get beyond that period we get to a different class - of what we might call magazines or periodicals. No doubt there are some magazines or periodicals of a very excellent character, whose circulation no one would like to see checked in any way. But seeing that in the past there has been no other class under which all these magazines and periodicals could come, and that the rates of postage have been fixed so very low that the proprietors have been in the habit of sending them through as newspapers, they have been held to comply with the definition, and therefore go through as newspapers. But that is not the end of it. Then there are a great number of things that are more in the nature of trade circulars than newspapers - certain publications issued in the interests of special trades. These have all been coming in as newspapers, and I learn from Senator Best, whose information, I presume, is accurate, that about 200 of them are passing through the post as newspapers. I think it must be admitted. by all that that is not the idea which the legislators and the postal authorities of the States had in view at the time when they gave such special facilities for the carriage of newspapers. I do not desire that these publications we have been speaking of should pay, as has been suggested, a very much heavier rate than a newspaper pays. But what I am inclined to favour is a description of another class of publication - a publication that may be issued weekly or monthly, with a definition also which it will be expected to comply with. In that way I. think we can have a rate for newspapers and a rate for magazines. It would be doing justice to the department, and it would inflict no injury whatever upon the publishers or the proprietors of these magazines.

Senator Best

- Will the Minister kindly explain, if any of these publications referred to fit his definition of a newspaper, what is the virtue in the seven days 1

<page>1243</page>

Senator DRAKE

- They fit the definition simply because it is so very hard to draw a line. We have got a definition, and a Postmaster-General does not like to condemn any publication which goes through, and say " This is not a newspaper, and we shall not carry it." The consequence is - and I am not speaking now of any particular publication - there are publications, especially at certain times, that go through the Post-office as newspapers, and are carried very often at a very low rate or for nothing, which are not newspapers in the ordinary sense of the word. It is simply an evasion of the Act. These publications contain a few columns of news, perhaps, taken out of another newspaper, and put in for the sake of satisfying that definition. Every one knows that the object for which the paper is published is not the object that newspaper proprietors, at all events, have in publishing their journals. In that way the Act has been evaded, and an unfair advantage has been taken of the especially low rates which have been fixed for newspapers. We shall hear directly, I suppose, that the Postmaster-General must be saved ; that he must be helped in any way ; that he must be a man with such a determined backbone that he can stop one newspaper or another, and allow others to go free. The most difficult task which can be set to a Postmaster-General is to discriminate between one newspaper and another. I know that the Postmaster-General will be charged with allowing one newspaper to go free because it disseminated radical views, and with stopping another newspaper because it was highly conservative. If a mid-way scale were fixed for the particular class of publication we are speaking of, so that it would come pretty closely to that of a newspaper, there would be very much less temptation to try and pass through the post as a newspaper a publication which has not the particular features which we understand a newspaper should possess.

Senator CHARLESTON

(South Australia). - I am sure the Postmaster-General must see that he will be penalizing a certain class of persons who are publishing a newspaper, and also their rights, because they are really too poor to publish weekly instead of monthly. There are numbers of persons who are concerned. For instance, in South Australia the Temperance Alliance has a newspaper published once a month. It appeals to a certain class, and I believe it has a very large class of readers too. It would be too costly for the Temperance Alliance to publish weekly. If they could afford to publish weekly it would be carried at this low rate.

Senator Sir Josiah Symon

- - That ought to be' circulated free in Western Australia.

Senator CHARLESTON

- But because they are not in that happy position they are to be penalized. I am sure the Postmaster-General must see that that would not be acting fairly to these people. Of course there are other, journals which might be mentioned. We might take the Licensed Victuallers' Gazette.

Senator Sir Josiah Symon

- That is the antidote to it.

Senator CHARLESTON

- Tes, that is the antidote. Then there are several newspapers published monthly which appeal to a certain class of readers, such as the Beacon, which was published in Victoria. To say that because those who support that paper cannot afford to support it weekly, they should be penalized is, I am sure, treating them unfairly and unjustly. I am thoroughly satisfied that the word "newspaper" is even a broader word, if it comes under the definition, than is the word "journal." Senator Harney has explained to me that the origin of the word would mean daily. I protest against the term prescribed in paragraph (6) of clause 26, which defines a newspaper as a publication that is published at intervals not exceeding seven days. I think that the term ought to be at least one month. I am extremely anxious that the Postmaster-General should have a discretionary power.

A Senator. - It is better to have the term fixed in the Act.

Senator CHARLESTON

- I shall support extending the period to one month and nothing . less. I am prepared to give the Postmaster - General certain discretionary powers as to determining what is a newspaper. I have no objection to that, and' I think those in whose interest I am speaking would be content with that. .In line 41 the clause says -

Recognised as a newspaper in the generally accepted sense of the word.

Who is to decide what is a newspaper in the generally-accepted sense of the word? Obviously it must be

the Postmaster-General. Seeing that we have given him that discretionary power I think he might agree to the amendment of Senator Smith without raising any objection whatever. I feel that such journals as those I have already spoken of would be included in the term "newspaper."

Senator GLASSEY

- Of course, I can see a difficulty here with regard to trade circulars. I think the suggestion made by Senator Charleston to allow certain discretionary powers to the Postmaster-General in differentiating between a trade circular and an ordinary newspaper may have some value. But I should like to point out a few of the papers which cannot be considered periodicals, and which certainly cannot be considered as trade circulars. Let me point to the RailwayTimes published in Queensland, and owned by a gentleman in the other Chamber. That paper is brought out by him and his family once a month. It has a circulation of about 2,000, and deals chiefly with matters affecting the railway servants of Queensland, but it also gives valuable information in regard to railway matters generally in different parts of the world. That journal has been issued now probably for the last eight or ten years, and surely the Postmaster-General cannot for one moment contend that that is in any sense an ordinary periodical, or that it is the ordinary tradesmen's journal.

Senator DAWSON

- Oh, yes, it is a monthly publication.

Senator GLASSEY

- I admit that, but it is certainly a newspaper, and it conveys to a number of readers - a certain section of our State - very valuable information. I am not so very clear that the journals circulating in the States of New South Wales and Victoria are not also monthly newspapers. But they cannot be considered ordinary periodicals. Again, take the MiningJournal - a journal brought out by the Queensland Government, and that, too, at the strong solicitation made for two or three years in succession by the mining members of the Queensland Assembly. I amongst others urged the Government strongly to bring out that journal, and a very useful journal it is. I received a copy of it only this morning.

Senator Drake

- What postage did it tear ?

<page>1244</page>

Senator GLASSEY

- One penny. Another paper owned by the State of Queensland is the Farmer and Grazier. That paper conveys a lot of valuable information with regard to the breeding of cattle, sheep, and horses, besides referring to other subjects. It is published monthly, and has been for a number of years. A list of other journals of an exceedingly useful character might be named. It would be unfair to the proprietors of those journals that they should be penalized to the extent that they would be under this provision. In no circumstances would I support such a provision, because I can see that it would inflict a great deal of hardship upon a number of persons who have invested capital and entered into obligations in a variety of ways. It would be reasonable to make the term one month instead of seven days. I think the Postmaster-General and his staff ought to have, a discretionary power in determining what are ordinary tradesmen's journals. These trade circulars should not be treated in the way in which the ordinary newspaper is treated. To penalize the people engaged in bringing out those journals, which are exceedingly useful as educational agencies, would be highly detrimental not only to the persons so engaged, but to others who are scattered throughout the country. I trust that the Postmaster-General will accept the amendment of Senator Smith. Coming to the question of postage, I certainly do not think that the postage rate is too low. In some instances I think it is too high. Indeed, since coming to Melbourne I have been more than amazed at the price - which I have had to pay upon some of the journals which I have sent to my own State. During the period of the celebrations I sent a number of publications containing some very excellent illustrations to Queensland. Some of them actually cost me 3-J-d. for postage

Senator Best

- Apply for a refund.

Senator GLASSEY

- I sent the Age away on Saturday to one of my constituents at Bundaberg, and I was charged Hd. postage. Does the Postmaster-General consider that is too little? I certainly think it is too high. If there is

any ground for complaint at all, it is certainly the other way. In many instances, of course, the postage is not too high.

Senator Drake

- It is not too high in New South Wales.

Senator GLASSEY

- No. But that is another matter. We are not dealing with that now, but a number of publications will be seriously handicapped and crippled if this provision is allowed to stand as it is. I hope- it will not. There is a broad spirit pervading the minds of honorable senators generally, and I hope that the amendment submitted by Senator Smith will --be agreed to.

Senator HARNEY

- I am opposed to this amendment. It" seems to me" that the line must be drawn somewhere between newspapers and books. The idea originally, I suppose, in giving this concession to newspapers was that it was thought advisable that persons should be facilitated in the receipt of ordinary up-to-date news. No more. It was intended to apply to the daily journals and the weekly journals which- are a. summing up of the political and other general newsy statements of the week. AVe must draw the line somewhere, and the Bill is aimed at giving the concession to what are newspapers in the generally-accepted sense of the word. Could any one say that a periodical which comes out once a month isa newspaper in the generally-accepted sense of the term ?

Senator GLASSEY

- Certainly.

Senator HARNEY

- What I understand to be a newspaper is not a volume that gives me information, but a sheet which gives me a summary of what is passing on contemporaneously in the world. That is what I call a newspaper. A newspaper is a photograph in print of the daily events that are passing around us, with observations upon them.

Senator DAWSON

- And are not monthly journals the same ?

Senator HARNEY

- Anything that comes out monthly is a treatise.

Senator Sir Josiah Symon

- It is a monthly.

<page>1245</page>

Senator HARNEY

- It is a monthly. No one could have the faintest chance of hoping to sell a monthly publication which was a statement or a collection of the ordinary affairs going on in the political, in the social, and in the commercial world. I am not saying at all that the concession is more justly applied to one than to the other; in fact, I am at a loss to see why there should be any such concession at all. On reading the clause, it appears to me that the concession is aimed at newspapers in the generally accepted sense of the word. Now, what I understand, and what I think every one understands, by a newspaper in the generally accepted sense of the word is a sheet which contains a summary of things going on around us and observations upon them. It is a matter of degree - two days are not one day, nor ten days two days. AVe must take a common sense line. A week, I think, is the furthest that we can ex- , tend it to, and mainly for the reason that a weekly publication is a summing up of the records of the preceding days. A great number of journals have their weekly editions, which are realty nothing more than a precis of what has been stated in the daily publications for the previous six days. Once we get beyond a week, and come to such a period as a month; no one could have the faintest hope of selling such a publication that had to do with the passing of current events. The only chance which the publisher of a monthly journal has of selling it is that it contains literary matter; essays upon things and scientific topics are dealt with. No one reads a paper which comes out so rarely as once a month for the purpose of getting an impress of the daily events that are taking place. A man reads such a journal for the purpose of educating himself upon some special topic. The question is whether we should allow a concession, which is aimed at newspapers in the generally accepted sense of the word, to include a journal that cannot be a newspaper in any sense of the word, since its only chance of existing is to avoid the matter upon which a daily

newspaper lives - namely, daily topics. A magazine must live upon literary, scientific, and polemical articles. It is a newspaper that is to get the concession, not a periodical. That seems to me to be the logical distinction between the two. There is also another commercial observation, and it is this : When we have a journal coming out so rarely as once a month it necessarily is bulky ; it cannot consist of two or three sheets- This concession was originally aimed at newspapers, because they were lighter than periodicals, and easily conveyed. Therefore, it was not thought a very great deal to give this privilege. But it will be another thing to extend it to periodicals, which can grow to a huge volume. AVe have a limitation upon the growth of a newspaper. No newspaper can be bigger than would enable an ordinary person to read it at breakfast, and no newspaper can contain more -than the telegrams which the press agency supplies it with. There would be no limitation to the size of periodicals, and to extend this concession to them would open up great liability to abuse, and would be very hard on the commercial side of the Post-office.

Senator DRAKE

- It is getting rather late, and I do not propose to deal definitely with this clause to-night. I would just like to say that the debate seems to have proceeded so far upon the assumption that if this limitation remain it is probable that all these monthly journals will be thrown out of the class of newspapers, and will be charged henceforward as printed matter. I should like to say here that my desire and intention is to draw up and make a separate class and rate for monthly publications. I shall try to come prepared to-morrow with an amendment to show how that can be carried out. I desire to say, also, that there is no wish to place the proprietor of any periodical at a disadvantage in consequence of this change, unless it is unavoidable. Of course, when we alter a rate the result must be a little inconvenience to the person who has to pay that rate. But there must be a time for it to come into force. With regard to the contention that contracts have been made on the present rate of postage, I would point out that this Bill will not come into operation until the 1st October next, and it is after that date that these rates have to be fixed. Probably they will not come into operation immediately. In that case I think we can arrange so that there will be no very great loss to any proprietor who previously has been in the habit of having his publication sent through the post as a newspaper.

Senator WALKER

- I simply wish to point out that Senator Harney made rather an ingenious remark with regard to the bulkiness of a monthly journal. If an ordinary monthly publication is compared, however, with the 26 issues of a newspaper for the month, the aggregate weight of the latter will be found to be much greater than that of the magazine. With all due deference to Senator Harney, I would like to say that there is a class of people, who read the monthly' journals, who will compare for intelligence with the average person who reads the daily newspapers. I say, therefore, that we ought to see that these journals are not penalized by being treated less favorably than newspapers.

Progress reported.

<page>1246</page>

22:20:00

Senate adjourned at 10.2 p.m.