

<url>https://www.historichansard.net/senate/1901/19010725_senate_1_3</url>
1901-07-25

Senate.

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

COMMITTEE OF ELECTIONS AND QUALIFICATIONS

Saunders v. Matheson

Debate resumed (from 24th July, vide page2937) on motion of Senator O'Connor -

That, in the opinion of the Senate, the law does not prevent the committee from entertaining the petition, and that the petition be referred back to the committee for further inquiry and report.

<page>2996</page>

Senator MCGREGOR

- Very probably, in justice to my fellow senators, I have to give some reasons for my anxiety yesterday to get the debate adjourned. I could plainly see, from the heat which had got into the debate, that the minds of honorable senators were not in their normal condition, and that any vote taken under such circumstances would not be the most judicious. Again do not approve at any time of any honorable senator or any number of honorable senators endeavouring to force any question through the Senate when there is not so full an attendance as there could be. What is always the effect of that? The effect is that any honorable senator may-not because he sees there would be a majority of the Chamber, if they were all present, in favour of any view which he considers to be right or wrong, but because he finds that there is such a majority present just at some particular moment - imagine that the psychological time . has arrived for taking a vote, and that it must be now or never. Legislation which is passed under such circumstances, to my mind, never can be wise legislation. On a committee appointed by the Senate there are two of the most prominent legal gentlemen in the Commonwealth, who could agree as to the interpretation of the Constitution which they assisted in framing. "When these constitutional technicalities come before the Senate, we find the very same thing occurring. We find on one side Senator Sir John Downer, Senator Dobson, and Senator Millen ; and on the other, Senator Sir Josiah Symon, Senator Harney, and Senator Clemons - the legal. profession, is one might say, of the Commonwealth, at variance "with respect to the interpretation of the Constitution. When a position of that kind arises, it is the duty of every honorable senator, in the interests of the Constitution, and in the interests of the Senate, not to be in too big a hurry, but to take some little time for consideration, and endeavour to arrive at the wisest possible conclusion. A great deal has been said by honorable senators as to justice, integrity, the appearance of justice and all that sort of thing. We all desire to be fair. AVe all desire to do what is really just towards both those outside the Senate and those inside, but then we must consider them all. We must consider that if we extend an extraordinary amount of consideration to one side, we deprive the other side of that very justice which we claim for the side we advocate. The difficulties which have arisen in connexion with this question seem to me to be of sufficient importance to justify every honorable senator in expressing his opinions before he records a vote. What is the difficulty we are in ? An election has taken place under the Constitution. Some cause for grievance has arisen out of an election, and some person outside the Senate considers it his duty, from what motives we need not now consider, to petition against the return. Then the Senate is placed in the difficult position as to how it is to act. I am not a lawyer ; I wish I was. I do not pretend to have either the knowledge or the experience which would enable me to analyze the position as it ought to be done ; but still as a representative of the State from which I come, and as an individual senator, I have a right to form my own opinions, and I am going to express them as briefly and plainly as possible. Section 10 of the Constitution has been repeatedly referred to. It says that until Parliament otherwise provides all elections to the Senate are to be carried out as far as practicable under the State law relating to elections. Both the honorable senators who took a position on the side of the Elections and Qualifications Committee, and those who are opposed to the position taken up by that body, have declared that this matter has nothing to do with the Constitution.

Honorable SENATORS - ~No.

Senator MCGREGOR

- Some ' honorable senators have declared that it has nothing to do with the laws of Western Australia.

Senator Drake

- That it does not apply to election petitions.

Senator MCGREGOR

- In my opinion it does apply to election petitions. I shall point out the reasons why I have come to that conclusion, and I suppose I have as much right to come to do so as has any one to arrive at an opposite conclusion, if the arguments in my mind justify me in doing so. Section 47 of the Constitution provides that if a difficulty of the description we are discussing arises, the settlement of it lies with the House in which it has arisen, until the Parliament otherwise provides. Some honorable senators, according to the expression of their opinions, have taken every section of the Constitution as standing by itself. Every section of the Constitution appears to them as an individual standing up with his own responsibilities. That is where, to my mind, the error has arisen. It is because every section of the Constitution has some relation to every other section that, to my mind, section 10 has something to do with an election petition, because section 47 says, "until the Parliament otherwise provides." The Parliament had made no provision when this difficulty arose in regard to an election to the Senate, and according to the Constitution the Senate was the proper place in which to deal with it. Until the Parliament otherwise provides, the Constitution has made the Senate a court. That is exactly the position as I see it. Then by what method is the court to proceed? Who has created the proceeding? Has the Senate power to do it? Some honorable senators have said - even Senator Sir Josiah Symon himself has said - that it was unfair to the committee to ask them to do anything without giving them directions? Has the Senate power to give them directions? Is it not provided in section 47 that until the Parliament otherwise provides certain things shall be done? The Senate is not Parliament, and therefore, so far as I can see, it had no power to give any directions to the committee, or even so far as its own judicial position was concerned it had no power to work under any directions except such as are given by the Constitution. What sort of a position would they be in if honorable senators allow what I am stating now to be correct - and can they deny it? Is there an honorable senator who will say that the Senate is Parliament? Is there an honorable Senator who will see in section 47, section 10, or any other section which distinctly states that "until Parliament otherwise provides," a power for this Senate to provide? Allowing that the Senate is not Parliament, and that the Constitution has created the Senate as a judicial body, when a difficulty of this description arises, where are we to go for our instructions? To the Constitution, of course; - and in section 10 of the Constitution it is distinctly stated - that as far as practicable everything in connexion with an election is to be in accordance with the law existing in the State in connexion with which the difficulty arises. Take the State of South Australia. Suppose that some one petitioned against me on the ground that I was not 21 years of age. The illustration may be ridiculous, because I look a great deal older than that, but I am only saying that a difficulty of that description might arise. If it did arise in South Australia, seeing that the Senate is not Parliament and has no power to make proceedings, under what law should I be tried? Under the South Australian law certainly. No one can deny that, because, in accordance with the words "until Parliament otherwise provides," the matter must be dealt with in that way. Then, again, suppose somebody in South Australia, brought in a petition against the return of Senator Playford because* there was not a sufficient number of names on his nomination paper - or because his election was in any other way irregular. When the petition was presented to this Senate, under what proceedings would it be tried? Certainly, under the operation of sections 10 and 47 of the Constitution, it would be tried by the South Australian law relating to elections. I do not think that if honorable senators were to consider the question for a hundred years, and were to consider it without bias, they could come to any other conclusion. Coming to the case itself, what has the Senate done? The Senate realizes its position. The leader of the Senate recognises the position. Because, if Senator O'Connor considered, or if the Senate was of opinion, that this Chamber was Parliament, what would have been done to provide for difficulties of this kind? The Senate would at once have established a court of disputed returns, not a committee for the purpose of getting evidence and giving the Senate advice. But the Senate has no power to do that. It is only Parliament that could do it. Therefore the Senate appointed the Elections and Qualifications Committee, and said to it - "Here is a petition; get all the evidence you can, and report." The great difficulty that has arisen in the minds of some of those who have already spoken is that they have not recognised the conditions that exist in the Commonwealth and in Western Australia, which is the place whence this petition comes. The very same thing would happen with respect to any other of the States. In Western Australia, if a difficulty of this kind arose, where would the petition be sent to? It would

he sent to the .court of .disputed returns. That court, we are informed, consists of two Judges, and its decision would be final. If the case occurred in South Australia it- would be sent to the court of disputed returns, elected by Parliament and presided over by a Judge, and its decision would be final. But here we could not do that, because Parliament has not otherwise provided, and the Constitution has made the Senate the court. Under section 47, the Senate has power to deal with this matter. Although the Senate is not Parliament, it has power to deal with it in what way it thinks .fit. The Senate could have delegated its power to a committee, or it could create a committee and ask it to be a committee of investigation, coming . to the Senate afterwards and reporting the evidence. That is exactly what the Senate did. It elected or created a committee - I do not care which term is used. It was peculiarly appointed, inasmuch as it was nominated by you, sir, and your nomination was adopted by the Senate.

Senator Sir FREDERICK Sargood

- That is the usual way.

Senator MCGREGOR

- Under the Victorian system perhaps, but I hope honorable senators will not imagine that there is .no other place in the world than Victoria.

Senator Sir Frederick Sargood

- Under the Imperial system also.

Senator MCGREGOR

- .The system that prevails in Victoria was adopted.

Senator Walker

- And it is the system prevailing in New South Wales.

Senator MCGREGOR

-That does not make it perfect. The system exists in those States under an Act of Parliament of the States, not under the ruling of one of the Chambers that is only .a portion of Parliament.

<page>2998</page>

Senator Lt Col NEILD

-Col. Neild. - In New South Wales it is done under the standing orders.

Senator MCGREGOR

- We hear a lot about New South Wales. Where is that place? At all events, the Senate appointed this committee, and submitted the question to them. I do not know whether the committee took evidence or not, but I suppose they made some inquiries. At all events they made sufficient inquiries to justify the majority of the committee in saying - " We see clearly that, under the only proceedings by which we have power to judge this matter, the whole of the conditions were not observed." This is where the great argument comes in. I am not one of those who would see any one put out of court by a technicality. I do not believe in any man being put out of court on a technicality. But there is no technicality in this matter. Of course it may be only my thick-headed way of reasoning, but I want to show honorable senators that in my opinion there is a very great difference between a condition and a technicality. There might be an argument as to what was the meaning of a particular word. I often hear people talking Latin in this Chamber, and I will use a little to illustrate my meaning. There might be a great difference of opinion as to whether a quid pro quo meant 2s. 6d. or 5s. Honorable senators can see that at once. If it appeared under certain circumstances that a quid pro quo must mean certain things, a difficulty might arise as to whether, under particular circumstances, it meant 5s., 7s. 6d., or any other sum. If a person was put out of court on a technicality of that description it would be very unfair. I will take the legal profession. I have always taken it to be a condition that if any one wants to get a lawyer's advice, he has to pay 6s. 8d. That is a condition under which you get the advice ; there is no technicality about it. There is no quidpro quo in the business 'either. I hope honorable senators will understand me - I mean every word I say. Very often when you 'go to a lawyer, and have paid your 6s. 8d., you do not get 6s. 8d. worth of advice. Certainly there is no quid pro quo in that case. Then, again, if I may 'quote a little' -more Latin - not to convey to the general public the impression that I -am a Latin scholar, because I am not ; I have only picked up a little from honorable senators - a technical difficulty might arise under a lease. I am only giving this as an example to show the difference between a technicality and a condition.

It might be enacted in South Australia that 'bulbine bulbosa was a noxious weed. There might be a condition in a lease that the leaseholder was to destroy the wild onion if it appeared on his property. That

might !be one of the conditions under which he held the land. If a difficulty arose as to whether bulbinebulbosa and a wild onion were the same thing, and the point as to the difference was argued by the legal profession in any court of law, -and the man was put out of court on it, that would be a technicality. But if the Act of Parliament fairly defined what a noxious weed was, and in the condition of lease it was so clearly set down' that there could be no misunderstanding, then it would be a condition. I think I have shown by a few examples that a condition and a technicality are not the -same tiling. I will now come to the main question. Because I do not want it to be imagined for a moment that I would record a vote in the Senate to prevent anybody through a technicality from petitioning this House. But my point is that the provisions of the Western Australian law, as applied to this case, constitute conditions. I have already shown that according to my argument the only way in which the Senate could try the case, was under section 10 of the Constitution, and in accordance with the law of Western Australia.' It has been clearly pointed out by Senator O'Connor that in every particular those conditions were fulfilled by the petitioner, right up to the question with -regard to the ten days within which the petition had to be presented to the court. The matter turns on the point whether the presenting of a petition to the court . within ten days was such a condition as was the provision with regard to the deposit of £50. Senator Playford, Senator Charleston, and every other senator who has addressed himself to the question-
Senator Charleston

- I have not spoken yet.

<page>2999</page>

Senator MCGREGOR

- The honorable senator has spoken by means of interjections. It is a wonder that the honorable senator is not asking for fresh information in the course of my speech. He seemed to be able to contain only one idea in his head whilst Senator Harney was speaking, for he was continually interjecting at the time. I say it was a condition under the Western Australian law that within ten days this petition should be presented to the court.

Senator Playford

- The Senate is the court, and the petitioner presented it in time.

Senator MCGREGOR

- I knew that Senator Playford would say that, and that he was saying it to himself all the time. I knew he was thinking that the Senate was the court. I knew that, and I was prepared for it. That is just exactly what I was going to deal with. I am going to show that the Senate can be a section of Parliament - the House which is authorized by the Constitution to deal with this difficulty - -and that it can be a court at the same time.

Senator Playford

- It is a court.

Senator MCGREGOR

- I am going to take your evidence, Mr. President, in support of my position. You will recollect, sir, that in South Australia for many years you were President of the Council. You were also Chairman of Committees. Now I come to the analogy between the Senate as a branch of the Legislature and the Senate as the court. It was just as necessary for you, sir, as Chairman of Committees, to report to the President as it was for you to put a clause to the Committee that you were presiding over. It was necessary in order to insure the legality of the position, that you should put the clause to the Committee, and it was also necessary, if you reported progress, that you should report it to yourself as President. According to the argument of some honorable senators, the Senate, when it occupies a dual position, has really no individual difference in itself. Under these conditions to which I am drawing attention, there was a great difference between you, Mr. President, as Chairman of Committees and as President of the Legislative Council. On every occasion you reported progress to yourself when it was necessary to do so. That is exactly the position which the Senate now occupies with respect to this case. Originally the petitioner fulfilled the first part of the conditions imposed by the Western Australian law relating to elections, and by section 10 of the Constitution Act. The first portion of the conditions had to be fulfilled to the Senate as a portion of Parliament. The second, or last condition, namely, the presentation of the petition to the court, had' also to be fulfilled. That is the position which I take up. A number of honorable senators 'have said - " Oh ! but this is taking advantage of a poor ignorant petitioner !"

Senator Playford

- On a technicality, too

Senator MCGREGOR

- There' is no technicality in it. The Senate as a branch of the Legislature, is as distinct under the Constitution from the Senate, as a court to try a case of this kind, as Senator Playford is from myself. There is no question about that. An effort has been made to create sympathy by the cry of the poor ignorant petitioner. The petitioner to my certain knowledge is not without means. I know that he is not poor, and I dare say the majority of the Senate are also aware of that fact. I do not think he would consider it a compliment to himself if we were to call him ignorant. I should just like honorable senators to go to him and try it on. I know he would appreciate it. Honorable senators ought to think before they make statements such as they made yesterday afternoon and evening. Even assuming that the petitioner was ignorant - taking for granted what those sympathetic honorable senators have said, does any honorable senator deny that he is fairly well off? Seeing that is the case, even if he were not ignorant he was able to pay for advice. The very facts prove that he did pay for advice. He had a legal representative before the committee of the Senate appointed to make these inquiries. The matter, however, does not even end there. I say that the petitioner was not Po04 and that I do not think he would like to be called ignorant. Even if he was he had a legal adviser who ought to understand the Constitution, or who ought to try and understand it.

Senator Playford

- That is what the lawyers of this House do not appear to be able to do.

Senator MCGREGOR

- Well; I understand it. I am not going to confess that having had the Constitution read to me dozens of times; I do not understand it better than it has yet been expounded here. All this, however, is beside the "question. This poor ignorant practitioner had a legal representative to protect him, and it has been clearly stated - I do not know- whether it is true or not - that it was pointed out to him or his representative that it was necessary to fulfil the' conditions by presenting the petition to the Senate as the court. Has not that fact been stated ? Does any one deny that it is true ?

Senator Playford

- It has been denied.

<page>3000</page>

Senator MCGREGOR

- No one denies it, and if every one accepts it as true, then did not this poor ignorant petitioner, or his legal adviser, get fair warning ? Does it not show that there was some one here who understood the difference between the Senate as a legislative body and the Senate as a court. Does it not show that some one here - I do not know who it was - understood the position and pointed out to the poor ignorant petitioner and his legal adviser that it was necessary to present the petition to the Senate as a court. That was not done ; at least it was not done within the ten days.

Senator Harney

- It was done, but not in time.

Senator MCGREGOR

- That is so. That condition, as I have shown, was just as much a necessary condition as the deposit of the £50, or the signature of the petitioner, and every other condition imposed by the Western Australian Act. However, it was neglected. The petition came before the committee, and they found out this omission. The majority of the committee recognised the position that I have . put. I can solemnly declare that I have never consulted any of them in connexion with their proceedings ; but the majority of them came to the same conclusion as I have come to. They held that the Senate is a legislative body, and that it is also a court, and that one of the conditions which they considered necessary had not been complied with. That is exactly the position as it appears to me, and that is why I am going to support the committee. I have not been in Parliament for 20 or 30 or 40 years, but I have been connected with trade societies, and I consider that they are very intelligent bodies. I want to show the irregularity which has cropped up here. If anything would prejudice my mind against the course of action that has been taken by the Government, it is this point. When a committee connected with a friendly society, or a House of Parliament, or a mining company, or anything of the kind, drafts a report, what is done ? The report is

presented for adoption. Has that been done here? It has not. What we have before us is a motion that the report be referred back to the committee. In a well-regulated trade society such an informality would not be allowed. What we now have before us would not be taken as a motion at all. It would be taken as an amendment on the motion that the report of the committee be adopted. Why was that not done in this case? I cannot understand why that course was not followed, but my little experience and my limited intelligence lead me to imagine that the course I have mentioned should have been pursued. Someone should have moved, that the report be adopted. Then if there was any one aggrieved - whether that party was a member of the committee or not - he could have moved as an amendment that the report be referred back to the committee.

Senator Sir John Downer

- Why did not some one do so?

Senator Sir Josiah Symon

- Because the Government had taken charge of the matter.

Senator McGREGOR

- This, procedure dawns on my dull intellect as an attempt on the part of some one - I do not know who - to have his own way in spite of the majority. That is exactly the position. That some one did not put the motion, as it ought to have been put, in the form of an amendment, but superseded the motion with a motion that ought to have been an amendment. I want to show the moral effect of this. If any trade society, humble as trade societies may be, submit a matter to a committee, and the committee report in a manner which is not approved by the society, the society will move in a certain direction. As a general rule, however, they accept the report. In this case we reject the report, or, at all events, send it back to the committee. In what position are the members of the committee? They have either to resign - a course which I would not advise them to adopt - or else they have to reconsider their report. If this report is sent back for reconsideration, it must dawn on the minds of members of the committee that it is of no use for them to bring back a report unless they are sure that a majority of the Senate will agree to it. It would be a disgrace to the Senate if we did not do justice to every one - even justice under the conditions laid down - but it will be a still greater disgrace if, after appointing an advisory body, and sending them away to another room, we tell them not to come back with the report unless they are sure we will agree with it.

Senator Clemons

- Lock them up till they do agree.

<page>3001</page>

Senator McGREGOR

- Lock them up! Starve them! Put them under" the thumbscrew but make them come back with a report that every one will agree to without discussion. That would be a most ridiculous position in which to place any committee. I hope such a course will not be attempted either by this or the other branch of the Commonwealth Legislature. We are asked by honorable senators who have spoken to do all that we can in order to do just. My honorable friend Senator Lt.-Col. Cameron would be inclined to hold a court martial on this affair - that is his instinct of justice; while Senator Dobson would settle it in a summary manner. He would deal with it in much the same way as they settle strikes in China - by chopping off the heads of the ringleaders. I hope we are going to calmly deliberate over this matter, and that we are going to do justice, not to one individual or to one section, but to every one. We see where the justice to every one comes in. It is doing more than justice to an individual - I do not care who he is - to construe the conditions so as to make them fit in with any lapse which that individual may have committed. Is there no one else in this case to be considered save the petitioner? Is not the individual against whom the petition has been lodged to be also considered? Is he to be kept until the day of Pentecost or some other day with this petition hanging over his head, for no other reason than that the petitioner failed to comply with every formality? I say that in justice to Senator Matheson, as well as to the petitioner, the thing should be squashed, because these conditions were not fulfilled. Again, look at the position of every senator here if the arguments of some honorable senators are adopted and put into practice. What would be the position of every one of us? It would not matter how frivolous a petition was raised, whether the petitioner fulfilled the conditions in Western Australia, South Australia, Queensland, New South Wales, or anywhere else, all that need be done would be to send it up. There could be a cartload of petitions at the end of next month against every one of us, and if we had to strain the conditions that were laid down for the purpose

of admitting them, where would we be? I ask honorable senators to consider these things seriously, and not because of what is only the shadow and appearance of justice miss what is really justice itself. Some honorable senators in. arguing this question asked what would happen if the electoral laws of China or Timbuctoo or anywhere else were adopted by this committee. This committee has no power to adopt the laws of China or of New South Wales if the difficulty arose in Western Australia. If the difficulty arose in New South Wales, according to what I have pointed out, they would have to .adopt the laws of New South Wales relating to elections until Parliament otherwise provides. If it occurred in Queensland, in South Australia, .or in Tasmania, it would be the same. The framers of the Constitution must have had this in their minds. They knew that Parliament could not immediately pass an Electoral Bill, they knew that some conditions must be adopted, and they had not time to. combine the conditions that existed in all the States, and consequently they said - and I can take no other meaning from it - the conditions in each State must prevail, under section 47 of the Constitution, until Parliament otherwise provides. In the present circumstances, no injustice will be done to the petitioner, because he did not fulfil the necessary conditions, and no more than justice will be done to Senator Matheson when he is. relieved of this sword that is hanging over his head. Nothing more than justice will be done to every senator who is -here if the report of the committee is adopted. As soon as Parliament can, it ought to pass a Bill regulating elections, and providing the conditions for the Commonwealth Parliament itself. But neither the Senate nor the House of Representatives alone has power to do .it, and it is only nonsense for any senator here to talk of sending this back to the committee, and appointing a set of conditions or procedure that they cannot adopt. We have not the power to do it. It is only Parliament that has got. that power, and the Senate has only to carry out the conditions which are already laid down. I am sorry I have been compelled to speak .at such length. I have thought over the matter as calmly as I could, and I have endeavoured to come to conclusions that are most just to all. I hope every honorable senator will -do exactly the same thing. If -honorable senators will do that, the vote will go in the -right direction.

Senator MACFARLANE(Tasmania).Since this debate began I regret that an attempt has .been made to make this a party question.

<page>3002</page>

Senator Sir Josiah Symon

- The Government have made it a party question.

Senator O'Connor

- They have done nothing of the sort. It is toeing made a party questionnow.

SenatorMACFARLANE. - Overtures have been made to me to make this a party question, but I decline to allow my feelings of fairness, right, and justice to be debauched for any party . purposes. The minority concerned in this report have mo wish to take advantage of the absence of two or three of the other members of the committee, and therefore, pairs have been found for them. I fail to see that there is , any censure at : all in this motion moved by the Vice-President of the Executive Council. It is, after all, only that an inquiry should be made. Why should we not make the inquiry ? Does not a Judge in court set aside the verdict of a jury when it is not legal?This report states that the petitioner has- not conformed with the electoral law of the State of Western Australia, and still the- members who fight against this motion now say that that was not necessary.

Senator McGregor

- Who said that?

Senator MACFARLANE

- It was stated that the law of Western Australia need not necessarily have been taken into consideration at all.

Senator Sir Josiah Symon

- Nobody said that.

Senator O'Connor

- Several honorable senators said it.

SenatorMACFARLANE.- There were no laches on the part of the petitioner, unless on a highly legal technical point. That is the position I found myself in when I was in the committee. That is the position I find myself in- now after six hours' debate upon the point. The legal luminaries are all divided upon the legal point, and why, therefore, should not the petitioner have a fair trial upon the merits of his petition?

Why should a technical point be taken to prevent him having that trial ?

Senator Clemons

- Why should he have to 'deposit £50?

Senator MACFARLANE

- The honorable and learned senator knows why.

Senator Clemons

- For the same reason that he should comply with the other condition.

Senator MACFARLANE

- The honorable and learned senator knows why, : and there is no occasion to refer to that point at all. I am not going into further legal points, but I hold that there will be great injustice to the plaintiff if his petition is not considered, while there will be no injustice whatever to the defendant. In common fairness and justice-

Senator Clemons. - It might keep the defendant out of Parliament for six months.

Senator MACFARLANE

- In common fairness and justice, the merits of the case ought to be inquired into.

Senator STANFORTH SMITH

- I think Senator McGregor has thrown a . good deal of- light upon this matter, and from a layman's point of view, he has dealt with the technical and legal points as . fairly as some of the lawyers have done, and he used as much Latin as some of the lawyers in doing so.

Senator Sir John Downer

- The honorable senator was more technical than any lawyer I ever heard.

<page>3003</page>

Senator STANFORTH SMITH

- I do not intend to waste the time of the Senate upon technical questions, because these have been very fully discussed, and we find . half the lawyers on one side and half on the other. I intend merely, as a layman,, to make a very few remarks upon this important question. In the first place, we delegated to a committee the task of considering this petition. That committee had the benefit, which we are denied, of having skilled legal counsel on each side to guide them. There were two very eminent constitutional lawyers, as well as leading business men, and leading men in commerce and finance. They had the advantage of the . assistance of counsel, and considered the matter at two meetings, and they had, therefore, a better -opportunity of coming to a correct decision than this Chamber has. The committee, after considering the matter very carefully, decided that there was a technical objection against the petition. That technical objection has been questioned by several members of the Senate, . who have said that we should not consider a technical objection. My honorable friend, Senator Cameron, said we should consider the facts of the case, but whether it is a technical objection or whether it is, as I am disposed to consider it, a necessary condition, which has not been complied with, is really the question we have to decide. A very similar question came up in the House of Representatives, and the committee there, after considering the matter carefully, laid their report upon the table. The leader of the Government advised that the House should accept that report. A similar technical objection arose on another question, and the committee again retired to consider it.- They again decided that the conditions had not been fulfilled, and the Government again accepted their report. We have eminent constitutional lawyers in that Chamber, in the members of the Ministry, the leader of the Opposition, and in members like the honorable and learned members for Indi and Northern Melbourne, and not one member there said that they had not a perfect right to consider whether the conditions had not been complied with before considering the facts of the case. That is a precedent laid down without any quibble in the other House, and surely we could adopt the same procedure here.

Senator Lt Col NEILD

-Col. Neild- Whether right or wrong ?

Senator STANFORTH SMITH

- I believe we have a perfect right to consider whether the conditions had been complied with. Otherwise, as many honorable senators have pointed out, we land ourselves in absolute absurdity. We must see first that the conditions are complied with. When the most skilful lawyers in this Chamber disagree on the matter, .and when we remember that a tribunal which has had legal assistance to come to a decision, and

have reported in a certain direction, is it not rather presumptuous of us to attempt to dictate to them on this technical point, and to show to those legal luminaries where they are wrong, and put them right? I consider, as has been stated before, that an unmerited though an unintentional slight has been put upon the committee in treating their report in the way in which it has been treated. I admit candidly that I made up my mind as to the action I would take on this matter long before that report was brought in. I decided that whatever it was, I would stand by the report of the committee. I think it would have been better, if members of the Senate generally had adopted that procedure. I consider it is a pity that such matters as this should have to be discussed by a body like this, whose decisions are liable to be tinged with party colour.

Senator Sir Frederick Sargood

- Did the honorable senator say that he had formed his opinion before the report was brought in 1

<page>3004</page>

Senator STANIFORTH SMITH

- I said that I had made up my mind before the report was brought in. Senator Sir Frederick Sargood seems to be extremely nonplussed and shocked by that statement, but the decision I came to was simply that I- would adopt the report of the committee whatever it was ; and I consider that it would have been a great deal better if other senators had arrived at the same conclusion . In England and in Canada they have a better procedure, and that is to delegate matters like this to a Judge or Judges. That is the best way in which such a matter can be dealt with. When that is not done - and we have not the power to do it in this case - the best thing to do is to relegate the matter to a committee of well-known men- - men skilled in the law, and men who have a knowledge of commercial affairs, and let them decide it rather than debate it here, and let party colour tinge the debate. I say with a great deal of diffidence, and with all respect, that it was a regrettable thing that the Vice-President of the Executive Council should have moved in this matter as he did. The committee's report came up, and in it we were told - That the petitioner has not conformed with the electoral law of the State of Western Australia, and your committee recommend, therefore, that the petition be not entertained. Your committee also recommend that the petitioner's deposit be returned.

That being the case, I think it would have been better if the leader of the Senate had not taken the initiative, because, although I am certain that it was absolutely unintentional, still the motion lends a party colour to his action. Why should he espouse the cause of the minority 1 There is nothing in the report to show that there is a minority against the petition. We have the expressed word of Senator Sir John Downer that he did not influence or approach. Senator O'Connor in any way. We have the word of other honorable senators that they did not do so. He had no official notification of the opinion of the minority of the committee, and yet he brings forward a motion, which was a surprise to all of us, that this report be disagreed with. It would have been better if he had laid the matter on the table for discussion. Senator Sir John Downer could have expressed his dissent from the finding of the committee, and after it had been fairly discussed, Senator O'Connor could have summed up both sides carefully and impartially, and then the Senate could have gone to a vote.

Senator Sir John Downer

- But how would I have brought the matter before the Senate ?

Senator STANIFORTH SMITH

- The report would have been laid on the table by the "Vice-President of the Executive Council for discussion.

Senator Sir John Downer

- It was laid on the table by me ; who was to go on ?

Senator STANIFORTH SMITH

- The honorable and learned member could have gone on with it.

Senator Sir John Downer

- I could not move that it be disagreed with. There is no precedent that I ever heard of for such a course.

Senator STANIFORTH SMITH

- We are informed that we have to go back to the time of Charles J. to find a precedent where the report of a committee has been disagreed with. If it was competent for Senator O'Connor to intervene it was equally competent for Sir John Downer to bring the matter forward. The great thing we have to consider is

that justice shall be done to Senator Matheson. If justice is done to Senator Matheson then justice will be done to the petitioner.

Senator Sir John Downer

- Justice should be done to everybody, I should say.

Senator STANFORTH SMITH

- If we do justice to one man we shall do justice to the other. I cannot see how by doing justice to one man we shall do injustice to the other.

Senator Sir John Downer

-Why put it that way ?

Senator STANFORTH SMITH

- This petition is against the return of Senator Matheson. We have to try and do justice to Senator Matheson, and, if we do, we shall also do justice to the other man. Instead of there being a calm, deliberative body of judges on this occasion, what has happened ? Every one admits the warmth that has been introduced into the debate. Every one admits the unfortunate partisan spirit which has been exhibited, and it is mentioned in the newspapers. What is the result? The question is remitted to a body of men, who are either partisans or opponents of Senator Matheson. There is not a senator on the committee who would not honestly and honorably do his best to give an absolutely impartial decision. But there is hardly a man here at present who is not unconsciously biased. . We have had the decision of the committee, and after we have had the leader of the Senate saying that party spirit has been introduced, after it has been shown by honorable senators that they have been unconsciously biased, we are asked to put the character of Senator Matheson into their hands to be judged. This verdict is an exceedingly important one. If there is an unconscious bias, and a wrong verdict is given, what is the result 1 The political reputation of Senator Matheson is blasted for all time j his private character is injured for all time ; and upon him is inflicted one of the greatest disgraces which could be inflicted upon any man. He is a young, and I believe an honorable man. He has come here. He is tried - how 1 I am afraid to a certain extent in a partisan spirit, because honorable senators are unconsciously biased. It is a great pity that we have not power to remit such an important matter to the Judges. It is a great pity that such an important matter should be brought up here, and discussed in a party spirit, and that then a committee chosen from amongst the very men who are so discussing it should have to try whether he is guilty. It is a deplorable thing that this party spirit should have been brought in. If the leader of the Senate had not brought forward the matter as if it were a Government question, if he had allowed the person who objected to bring it forward, instead of being made - I speak with all respect - the cats paw of that gentleman, it would have been far better, and the discussion would have been more calm than it has been. It was a great mistake that it should have been brought before the Senate at all to be discussed. If honorable senators had made up their minds - seeing that the men on the committee were known for their ability and impartiality - to accept the decision of the committee as the other House did on two occasions, it would have been infinitely better than to have the matter dragged in here, and discussed for two days with- the greatest warmth which has ever been exhibited in the discussion of a question, and then for those who are unconsciously biased to have to try the case again, and perhaps blast a man's reputation for life.

<page>3005</page>

Senator FERGUSON

- I have listened very attentively to the debate from the commencement, and I noticed that legal gentlemen took up nearly the whole of yesterday in debating what I consider trivial legal questions. At all events, they seemed to be pretty nearly divided. There were about the same number holding opposite views, and so far- as I can; see they are as far off now from arriving- at a decision! as they were1 at the commencement. At all events they have left me exactly of the same opinion, as at the1 commencement - that- is, that' the petitioner- did all he could to comply with the law; and that if. there is any mistake at all it is not his fault. I do-not admit that there is a mistake, but if there is a mistake1 it is not" his fault. Therefore it. is our duty to see that he should' receive a hearing - at all events that he should receive justice. It has been mentioned several times' by some senators that it would be unfair or unjust to the committee that their report should be rejected or sent back.. But that is a common' thing in all public- bodies.

Senator Stanforth Smith

- Not with: a Committee of Elections and Qualifications.

Senator FERGUSON

- A committee' brings up a report; and it is often referred back for consideration, and i its1 members never consider it aru insult te' them that that should be done. It often turns out that it is to the> advantage and advancement of- their views that that course should be taken. Let. the: petitioner and. Senator Matheson^ and the' electors of Western Australia have a fair trial!.. They will not not have a fair- hearing if the motion is rejected. To- show the fairness of those who support the motion, I am informed that Senator Walker-lias: paired with Senator Fraser,- and Senator Dobson-, has offered to pair with Senator Glassey, so that there is no intention to take advantage of absent members of the committee. I hope that all honorable senators will act in*, a fair and' reasonable manner, and. not allow any legal quibble to. interfere with the. exercise of their1 judgment. Let us allow both, parties to have a fair trial,, and. it will not be a disgrace to either side or amy party.

<page>3006</page>

Senator O'KEEFE

- I could not agree last night with Senator1 Dobson when he said that the question should; have gone to1 a vote immediately, especially as he went on to speak for a considerable- time. No more important question) has come before the Senate' than this one, consequently every honorable senator should have ample time to' consider it in all its. bearings, so far as the information which has been laid before him will permit, in order to1 give an intelligent, honest, and impartial vote. Senator Staniforth Smith regretted that party spirit had been introduced. My vote1 will not be influenced by party spirit, and perhaps it has been' given against the Government as often as it has been given; with the Government. The Senate has been flooded with legal arguments,, and to use one. honorable senator's expression,, legal subtleties. Very many of the honorable senators: who have: had: to listen' to these legal arguments are just as clear on the legal points now as they were- when the lawyers commenced to express their' opinions. It is: an old' saying that the. legal profession is the best training ground for Parliament. I think we might, say that, if we had many debates such as the one we had! last night, Parliament wouldl be- the best training ground for the legal profession. Seeing that, there is. such-, diversity of opinion between the lawyers - diversity of opinion expressed by some of the most prominent lawyers in; the Commonwealth - I think I. am perfectly justified in trying to form my om conclusions, so' as to vote honestly and. intelligently without considering so much the- legal aspect of the case. After going down to the solid bedrock of the facts it would seem, from' what I have heard, that it i lias been, the usual custom for the report of a committee of this kind' to-, be accepted,, but we have: also, heard in contradistinction to that statement that it need' not necessarily be accepted, if it is thought that it would, inflict 01 gross- or palpable- injustice. We have to consider whether the report of the committee; if adopted, would inflict an injustice on any one: I am as loath as any honorable senator can possibly be to send back the report, but,, at the same time, I feel that there is a- great principle underlying this question.. I know absolutely nothing, of the merits of the case: - whether the petitioner has good solid ground- for his. petition: or whether it is a frivolous'- one - and I want to know nothing about it. Perhaps if I knew anything about it, it might unconsciously bias, mc in giving my vote. Whether it is a frivolous1 petition or whether it is based on good grounds- we do not know. Honorable senators do not know anything, about the petition,, simply because they did not hear it. I put it to honorable senators,, many of whose opinions on social questions coincide with my own - suppose for argument's sake that this petition were based upon admittedly good grounds, should we dismiss it without allowing the petitioner an opportunity of showing that that is so? It seems to me that we have constituted ourselves a judge and jury, whilst at the same time we have not allowed the plaintiff to state his case. If we accept the committee's report, and do not allow the petitioner a hearing, we may be- creating a precedent which would certainly do incalculable harm to- very many citizens : in the future ; perhaps to senators- now present, as well as to other free and independent electors who may choose to face an election. We will take it that a man, with all the power of' wealth and money bags behind him,, went into a district, and, perhaps, by spending £2,000 or £3,000, so corrupted a number of the electors that he practically purchased their votes, and bought himself into a seat;

Senator McGregor

- It is our duty as a Parliament to provide against that sort of thing,, and we have not done it yet.

Senator O'KEEFE

- It is because we have not done it that we should be careful not to take- any step that will allow it to go

forth to- the public that we are going to put it out of the power of any individual to get redress A case might occur in which a man, as- I have said, might purchase his seat by corrupt means; and a candidate for the same seat who, except for the influence of money,, would- on his own merits have won the seat,, might come' to Parliament and say, " I petition against the return: of the elected candidate, on the ground of corruption;." Yet simply because of some technicality - because the candidate was not able- to do' everything which he was supposed by the Act to do - we should, if we followed this practice; refuse him a hearing:

Senator McGregor

- A man would not be allowed to be a candidate unless his nomination paper was properly signed.

Senator O'KEEFE

- But that is a vastly different condition from the one under consideration. Every one who* stands for election knows very well that, he has- to have his nomination paper properly signed. It is within the ordinary knowledge of every candidate for Parliament, also, that he has to final a- certain deposit It is within the knowledge- of every candidate- in every State that he has to comply with certain conditions, which, although they may not be- the same in every State, approach to similarity. But it certainly would not be within the knowledge of every defeated) candidate what would be the exact procedure to be gone through in regard to presenting a petition against the return of a member. I am saying that, believing, implicitly the statement which was made yesterday by the leader of the Government in this Senate.

Senator Clemons

- What statement was that?

Senator O'KEEFE. - That the petitioner' had done everything he could be expected to do under the Western' Australian law ; and, although there was a conflict of opinion as' to whether he had done it or not, that conflict of opinion is only with regard to a technicality.

Senator Sir Josiah Symon

- The statement of the Minister is in opposition to the finding of the committee;

Senator O'KEEFE

- It is ; but: there again we- are involved in those legal technicalities with which the Chamber has been flooded. We are swimming in them.

Senator Sir Josiah Symon

- The honorable senator is relying on the statement of Senator O'Connor in preference to that of. the committee.

Senator O'KEEFE

- I would not place more reliance upon the statement of Senator O'Connor than upon the statement of Senator Sir Josiah Symon.

Senator Sir Josiah Symon

- I said " the finding of the committee."

Senator O'KEEFE

- It is acknowledged all round the- Chamber, that the legal members cannot agree amongst themselves upon this question. It has been shown, in the course of the debate that there is. a great difference of opinion as to whether the conditions laid down- in the Western Australian law have been complied with or not.

Senator Clemons

- Does the honorable senator consider the presentation of that report by Senator O'Connor ?

<page>3007</page>

Senator O'KEEFE

- I have given that subject consideration ; and with all due deference to the honorable and learned senator's opinion,. I think that Senator O'Connor was* perfectly right in presenting the report to the Senate, if he thought that by not presenting it- an injustice would have been done; either to the' petitioner' or to- the other side. I do not hold a brief for the petitioner. I do not know the gentleman. I never saw him in my life. Perhaps it would not be out- of place, or a breach of parliamentary etiquette, for me to say that no senator will be more pleased than myself, if after the ease has been decided on its full merits, it is found that the senator who won the seat still retains it.

Senator Staniforth Smith

- After he has been kept out of his seat for six months.

Senator O'KEEFE

- I admit it is a great hardship to Senator Matheson to keep Mm out of his seat, but it must also be admitted that it was a hardship any one of us might have suffered. Any senator* was liable to suffer such a hardship, under the peculiar conditions at the commencement of our Commonwealth legislation. The Senate has not done anything towards bringing about that hardship. It was the peculiar conditions attaching to the commencement of our life as a nation that brought about this hardship ; and although we can all sympathize - and I believe the majority of us do - with the honorable senator who rests under a cloud at present, still that should not prevent us from trying to do what is the best thing in laying down a precedent that may be followed for all time with absolute fairness. If one thing more than another has been proved by the debate upon this regrettable question it is this : that the sooner a proper tribunal is appointed for dealing with such matters the better it will be ; and I for one say that, having had a little experience some few years ago in watching disputed elections, I hope that that tribunal will have nothing to do. with any branch of the Legislature, or with any committee appointed by it, but will be completely outside either House of Parliament, and will be a higher authority. It has been said by one honorable senator, that in sending this report back to the committee we shall be sending it back to seven gentlemen who are either partisans or opponents of Senator Matheson. I think that is a reflection upon the honour of the gentlemen who form the committee.

Senator Staniforth Smith

- I said unconsciously biased.

Senator O'KEEFE

- I do not think there is any necessity for fearing that.

Senator Harney

- Does the honorable senator think that the committee will change their minds 1

Senator O'KEEFE

- Perhaps they will not ; but whether they change their minds or not, we shall, by sending the report back to them, have removed from the Senate a stigma which I fear will hang over this Chamber if we do not give the petitioner a hearing. I am not going to occupy the time of the Senate any longer, seeing that the debate has been drawn out to a considerable length, but this is a question upon which I think every senator is entitled to state his reasons for the vote he is going to give. Although I am reluctantly compelled to vote for sending back the report - because I agree that we should give due and earnest and - long consideration to any report of a committee before we send it back to them - still I think we have given such consideration to this report, and my vote must be recorded in that direction.

<page>3008</page>

Senator CHARLESTON

- Undoubtedly a very important duty is imposed upon this Senate by the motion that is now before us. It is highly important that the Senate should do what it feels to be right, irrespective of any party feeling whatever. I thought when Senator O'Connor moved this motion that he did so, not as a member of the Government, but as the leader of the Senate. The Senate having received a petition from a citizen requesting us to deal with a certain matter, we were bound, to do so. A great deal has been said as to whether the Senate received the petition on a certain day or not. All I know is that the petition was presented to the Clerk of the Senate within the 40 days mentioned in the "Western Australian Act. I can very well understand that a person petitioning from Western Australia would be influenced in his conduct by the law of that State bearing upon this matter. Undoubtedly the petitioner studied the law of Western Australia, and found that he must present his petition within 40 days after the declaration of the poll. He did so ; and as the law of Western Australia also states that £50 must be deposited, the petitioner deposited £50. Having presented the petition to the Clerk of the Senate, I can very well understand that the petitioner would imagine that he had done all that he was called upon to do in order that the petition might be heard. I do not believe that the Clerk told him that he had not done all that was necessary. I can very well understand the Clerk telling him - if he did so - that the usual form was that petitions should be presented by a member. I do not know whether or not the petitioner asked three members of the Senate to present his petition ; but if he did so, and those three members declined, I hold that he was justified in leaving the petition with the Clerk, with the request that the Senate should deal with it, and that he was

justified in relying on the honour of the Senate, and in believing that his petition would be heard. The petitioner having done that, it became the duty of the Senate to give effect to the prayer of the petition. AVE neglected our duty in not doing so. Now we are in this position - that having knowledge of the petition, and having acknowledged the receipt of it without discussing whether it was presented at the right time or not, we are not justified in not inquiring into it. The fact that no objection was raised at the time the petition was presented indicated that no technical objection was offered to its receipt. Having received the petition with a full knowledge as to the time it was presented, the Senate appointed a committee to act ; and from that moment we as a Senate were dealing with the matter. The committee were appointed to inquire into the case; and they reported that the petitioner should not be heard, because he had not complied with all the conditions laid down under the "Western Australian Act. What is the result ? Some of us think that this is not a sufficient reason for refusing the petitioner a hearing. The committee were divided. There were four on one side and three on the other, and there was a lawyer - a King's Counsel - on either side. They argued the thing out, with the result that they brought up this report. As the chairman was in a minority how could he, with any grace at all, move that the report be adopted, and then vote against it.

Senator Staniforth Smith

- He ought to have taken the beating like a man.

Senator CHARLESTON

- I think that his action is justified. The committee were not told to decide the case. They were appointed simply to inquire into it and bring up a report. Therefore, if the report did not conform to his opinions, the chairman had a perfect right to lay his objections before the Senate. Senator Sir Josiah Symon argued yesterday that no notice of this motion had been given. But what are the facts 1 Senator Sir John Downer brought up the report last Wednesday week, laid it on the table, and moved that it . be taken into consideration on the following Wednesday. The report might then have been considered, but at the request of Senator Sir Josiah Symon, and with the approval of Senator Matheson, the matter was deferred for a week. Therefore, every senator has had ample notice. Senator Sir Josiah Symon was not prepared the other day to move the adoption of the report. The Chairman would not do so, and therefore the leader of the Senate, in order that the business of the House might be proceeded with, moved that the report be sent back to the committee.

Senator Clemons

- The' honorable and learned senator was not asked to do so.

Senator Staniforth Smith

- What information had Senator O'Connor to go on in moving that motion.

Senator CHARLESTON

- The leader of the Government, .like myself, probably, thought the matter over, and considered that we were not justified in refusing a hearing to the petitioner solely because of the point raised under the Western Australian law.

Senator McGregor

- The petitioner could not be heard under any other law.

Senator CHARLESTON

- We allowed the petitioner to be guided by the Western Australian law up to a certain point. He obeyed the law up to the point of laying the petition before the Senate. The petition then became the property of the Senate, and it was for the Senate to deal with it.

Senator Harney

- Who ought to have set the Senate in motion 1

Senator CHARLESTON

- If no one else would set it in motion, it was the duty of the leader of the Senate to do so.

Senator Harney

- But to set it in motion in time.

Senator CHARLESTON

- The leader of the Government in this House did take action, and if he did not do so in time that was the fault of the Senate rather than the fault of the petitioner. That is where the legal technicality comes in in regard to which Senator McGregor has argued so ably.

Senator McGregor

- The petitioner was told that it was necessary

<page>3009</page>

Senator CHARLESTON

- That does not matter. The petition was the property of the Senate, and we who are intrusted with the rights of the people, and have in our hands practically the liberties of the people, should be the very last to do anything that would debar a citizen from being heard on petition to either House- Surely we are not going to shelter ourselves behind that little section in the Western Australian Act, and say that the petitioner should not be heard because he did not come round cap in hand and implore some honorable senator to take the matter up. The man placed the petition in the possession of the Clerk, and thus placed it in the possession of the Senate.

Senator McGregor

-He could have come tome with his cap on and I would have done what was necessary.

Senator CHARLESTON

- That may be, but having placed the petition in our hands I, for one, having been with other senators intrusted with the charter of the liberties of the people, will not do any thing that would prevent any petitioner from being heard. We know very well that the whole position is a peculiar one. We are starting on our existence as a Senate, as part of the Federal Parliament, and we have not yet created the procedure necessary for dealing with certain matters. In this matter the members of the Senate constitute the court, because section 47 of the Constitution Act provides that a petition must be dealt with by the House to which it relates. Therefore, if a petition is launched against any honorable senator, we, as the Senate, have to deal with it. We are the court to try it. In this case we appointed a committee to gather up the acts, and to lay them before us, but I presume that the Senate still has the right to give the final decision. The committee have practically brought up a report without inquiring into any of the facts of the case against our worthy fellow senator, and it is said that, because the petitioner did not implore some honorable senator to present the petition to the Senate, he should be thrown out 'of court. I deeply deplore the fact that a party spirit has been introduced in dealing with this matter. Up to the present we have 'not heard one word about the merits or demerits of the case. I know nothing about the petitioner personally, nor am I acquainted with the charges laid against Senator Matheson by him. My mind is perfectly open to form any judgment as to the merits or demerits of the petition. In my opinion, however, when a citizen appeals to us, and has done all that could be expected of him, then, if we neglect our duty, we have no right to inflict an injustice on the individual because of that neglect. It has been said by some honorable senators that, unless we throw out this petition, it will be possible for petitions to be lodged against any honorable senator up to the end of the six years' term. Senator Stewart. - And so it will. Senator CHARLESTON. - I grant that that maybe correct; but what would the Senate do with such a petition? Supposing for example that anyone presented a petition against me after such a long interval. The Senate would say to the petitioner - " Oh, no; in all justice to Senator Charleston, you ought to have presented it before."

Senator Harney. - Will the honorable senator define "in all justice."

Senator CHARLESTON

- The petitioner, in this case presented a petition within a period which would allow evidence to be gathered. If we allowed a petition to be brought in at the end of six years, when those who could give evidence might be scattered to the four comers of the earth, we should have no chance of verifying the charges.

Sir WILLIAM ZEAL

- A petitioner would be out of court at the end of six years.

Senator CHARLESTON

-The introduction of this point is a mere quibble. Technically it is right to say I that a man could present a petition under our present system up to the end of six years ; but I contend that in this case the man has presented his petition within the time that enables us to collect the evidence.

Senator Harney

- Who is to fix the time?

<page>3010</page>

Senator CHARLESTON

- I think this point was raised simply to frighten honorable senators, and lead them to believe that there will always be a sword of doubt hanging over their heads. Even if such a thing is probable, I am not afraid of any petition being laid against me. If one was lodged, I feel confident that the Senate would do its duty by me and by the petitioner. I consider that it is the duty of the Senate to hear the petitioner and to form its own judgment. I for one will not be found voting with the majority of the committee. I shall be found voting with the leader of the Senate, who desires that the matter be referred back to the committee for further consideration. We are told that the adoption of the motion would practically be an insult to the committee. Nothing of the kind. We often have to refer reports back to committees in the State Parliaments. I have been on a select committee on a private Bill, and the members of that committee have been asked to take back the Bill for further consideration. The committee in such case did not feel that any insult was being cast upon it. If we appoint a committee of seven or eight members to do certain work, and that work is not done to the satisfaction to the Senate, there is no reflection on the members of that body in asking them to again consider the matter.

Senator Clemons. - What will the honorable senator do if the committee bring back the same report.

Senator CHARLESTON

- If they do, we shall know how to deal with them. If the committee will not do what we ask them to do, we can appoint another committee to do the work ; or we can deal with it in committee of the whole. The matter is in our own handstand it is beneath the intelligence of honorable senators to suggest that by referring this petition back to the committee we shall be casting reflections upon them. I think that a very strong case has been made but that the petitioner shall be heard, and that the petition shall be inquired into, and I, for one, will at least vote that the matter be referred back for inquiry.

Senator Major GOULD

- I regret I was not present during the debate which occurred yesterday, because I have not had the advantage of hearing the arguments then adduced for and against the motion submitted by the head of the Government in this Chamber. I recognise, however, that some reflection has been cast upon the Vice-President of the Executive Council for having taken the action he did in regard to the adoption of this report, and I should like to say at once that, when it was a matter for consideration as to what we should do in regard to the report, it appears to me that it was the manifest duty of the leader of the House to take some course of action in order that the matter might be debated fully. It now becomes a question for us to consider whether it is wise, in the interests of the Senate and the administration of our public business, that the motion submitted by the Vice-President of the Council shall be adopted. I understand it has been plainly stated here that in Western Australia the practice is that a man who has a petition to present must present it within a certain number of days. He must pay a certain deposit, and he has also to see that the petition is referred to the court for "the trial of election petitions. It becomes part of his duty, I understand, to move some honorable member of the House to have his petition referred to the court.

Senator Sir JOSIAH SYMON

- Within ten days.

Senator Sir JOHN DOWNER

- How does the honorable and learned senator understand that?

Senator Major GOULD

- That is what I understand, and I also understand that the gentleman who presented the petition on this occasion asked one or two members of the Senate if they would take action in the matter for him, and they declined. I think it was also stated in the debate that the Clerk informed the petitioner that he must have the petition referred to the court.

Sir WILLIAM ZEAL

- I think the Clerk should be kept out of it.

The PRESIDENT

- The Clerk has denied that.

Senator Harney. - I think I was the person who made the statement.

The PRESIDENT

- I think the honorable and learned senator has already explained.

Senator Harney

- With all respect, I would like to say that I do not think the Clerk denied that he said the petition should be presented to the House.

The PRESIDENT

- Perhaps it is better that I should explain. What I understand the Clerk did say was this - "I speak to you privately, and what I say ought not to be repeated, but, in my opinion, I think the petition ought to be presented." But he said nothing about referring it to the court, because there was then no court in existence.

<page>3011</page>

Senator Major GOULD

- I am very pleased to have the explanation. I understand that the usual course after the presentation of a petition is to move a member to have the petition referred to the court in the usual way. Honorable senators in dealing with this question have said that this man did not exactly understand the whole of the "procedure, and possibly overlooked a matter which he did not think it necessary for him to attend to. At the same time we are told that he deliberately adopted the Western Australian practice, as perhaps he was more conversant with it than with any other course of procedure that occurred to his mind. If that be the case, it is very clear that it would become his duty to follow up his petition by all the necessary steps, in order to insure its being submitted to the court in proper time for proper consideration. Many honorable senators seem to say that we are doing a dangerous thing, and that we are shutting out the right of petition. We are not shutting out the right of petition - we are recognising the right of petition - but we say that there are other steps which should be taken, and that those steps should primarily be looked after by the petitioner himself. If that be the case, is there any one to blame but the petitioner in this particular instance ?

Senator Sir John Downer

- He went to two persons.

Senator Major GOULD

- We talk about the value of keeping our court perfectly pure, and having our procedure carried out in such a way that any man may petition against the right of a senator to represent an electorate. But let us bear this fact in mind, and remember that the man petitioned against is entitled to some consideration, and that his State is entitled to some consideration. While a petition is presented against the return of a senator, that senator is practically unable to do anything in the ordinary way of attending to his legislative duties. He knows that if it is proved that he has been improperly elected, -he will be liable to a very heavy penalty for every day upon which he may have voted.

Senator Harney

- £100.

Senator Major GOULD

- £100 for every vote he may have given. Therefore, as a prudent man, he generally wishes to take no part in the proceedings until the petition against him is dealt with. If we do not adhere to the time condition in every respect we are placing the man petitioned against in this position : He is shut out from voting, and his electorate is deprived of his services in the Senate, because some man has submitted a petition, which may or may not be proved. We must not assume that because a man says that another is guilty of bribery the charge is proved.

Senator Sir Josiah Symon

- We must assume the contrary until it is proved.

Senator Major GOULD

- As the honorable and learned senator says, we must assume the contrary. Let us remember that a man who chooses to make so serious a representation against another as to charge him with a gross act of bribery should be fully fortified in the course he is pursuing, and should be prepared to conform with the necessary procedure to bring the matter to a head, no matter what decision may be arrived at, at the earliest possible date. I do not see how we can go back upon what has been done by the committee in this particular respect. I know it may be said that there is too much of technicality in these things very often ; but I find that the head of the Commonwealth Government himself, in the case of a petition against the return of the honorable member for Fremantle to the House of Representatives, took certain action, when the committee there had reported upon the case in these words -

Your committee find that the petitioner has not complied with the law of the State of Western Australia relating to parliamentary elections, and your committee therefore recommend that the petition be not entertained.

So far as that report is concerned, it simply shows that certain technical- requirements had not been attended to, and yet it was resolved, on the motion of the Prime Minister -

That the report of the Committee of Elections and Qualifications be adopted, and the petition be dismissed.

Here we have a report submitted upon a pure technicality, and the Prime Minister moves that it be adopted forthwith, and it is adopted without any debate at all.

Senator Sir Josiah Symon

- And the law of Western Australia is assumed to be applicable.

<page>3012</page>

Senator Major GOULD

- - When we come here, however, we find that a different course is adopted. I maybe told that in the other case the deposit of £50 was not paid, and that in this case there was only an oversight on the part of the petitioner in not 'seeing that the petition went to the proper court in the proper time. There may be a great distinction between the two conditions in some ways ; but on the other hand I think honorable senators will realize that where time is an element of importance we cannot lightly disregard a requirement of that character. Otherwise we may have petitions hung up over the heads of honorable senators for an indefinite period. We might have a case where a petition would be lodged and no steps taken for some considerable time afterwards, and then, when some very critical matter might be coming on, a course of action might be taken in order to bring it. up for consideration. I do not say that such a thing would take place, but I say there is a possibility of it.

Senator Charleston

- We shall create a course of procedure.

Senator Major GOULD

- I hope we will create a course of procedure for these cases, but we should always bear in mind that where ' there are requirements we must insist upon their being observed carefully, in order to protect ourselves as well as to protect the public. It may be that this petition, if inquired into,- will be found to be a bag of moonshine. We know that the honorable senator against whom the petition is lodged was returned by a very large majority ; I believe he stood second on the poll, and his majority was nearly 4,000 'or 5,000 beyond the number of votes polled by the man who was sixth on ' the poll. Are we going to say that the probability is that those 5,000 votes were recorded for this man in consequence of the payment of a certain sum of money to a particular association, as alleged in this petition? Surely we are not going to assume such a thing is probable at all ? It is most unfortunate that this matter was not referred, in the very first instance, to a proper tribunal to be dealt with. I do not like the idea myself of a petitioner being knocked out on account of non-compliance with a formality.

Senator Sir John' Downer

- And our non-compliance.

Senator Major GOULD

- It is a question whether it is on account of our noncompliance. But while I think that it would be a pity to prejudice this man, I would ask why, on the. other hand, we should prejudice the man who comes to this Senate elected by a large number of votes, as a representative of Western Australia 1 Why should we prejudice the whole State of Western Australia for an unknown period of time? If we are going to deal with the disadvantage of the parties, .we must determine on which side the balance of disadvantage will lie? J say we must adhere to the belief that what has been done by the electors in the States, and what was done by the senator to secure his seat, has been a fair and honest action throughout. We are not to assume that the man elected has been guilty of wrong. Honorable senators in discussing a matter of this kind should not consider only the petitioner. They should consider also the representative of a great State. They should . consider the State' itself, and how far we are interfering with the rights of that State to representation. However grievous, a wrong it may be to an individual to lose his seat improperly, it is a still more serious, thing to deprive a State of the services of a man deliberately chosen by it to» represent it in the Senate of the Commonwealth. -It is a much more serious thing, to take away from the

men who voted for that representative the rights they are entitled to exercise through their member in this Senate than it is, on the ground of a technicality, to put aside an attempt made, by a gentleman to have his petition heard, which I am willing to believe he has presented in good faith, but which remains to be proved, and may not be proved at all. I do not think a stronger instance of the way in which the Government themselves have recognised the necessity of adhering to these technicalities could be adduced than is afforded in the case which occurred in the other Chamber in connexion with the petition against Mr. E. Solomon. I see no other course for it, but in the interests of the Senate itself, of the State of Western Australia, and of the Commonwealth, to insist that in all cases where certain requirements are laid down, before a man may bring such a matter into question, the technicalities shall be observed to the very fullest extent. It will be a lesson to the public, and will make them careful, and" at the same time it will protect the great interests of the Commonwealth, which have been intrusted to our care.

<page>3013</page>

Senator STEWART

- I am sure every senator here is animated by only one desire, and that is to do justice both to the petitioner and the sitting member. Having that in view, it appears to me that the motion asks us to take a most unusual course. We had a petition presented to us, charging a sitting member with corruption and bribery, and we referred that petition to a committee. We constituted, so to speak, a judicial committee, in other words, a bench of judges, to deal with this question, and now this judicial committee or bench of judges, having delivered its decision, we are asked to reverse that decision. I do not say that it is not in the power of the Senate to reverse the decision, or to send back the report of a committee for further* consideration ; but I do say that it is most unusual, and it appears to me to be a most improper, course to pursue. Let us assume for the moment that the committee had found the petition was duly lodged, had entered into the consideration of the merits of the petition, had summoned witnesses before it, and had decided against the petitioner. Would the Senate, under those circumstances, be justified in reversing the decision of the committee ? Would it attempt to interfere? If it did it would at once be laying itself open to the charge of permitting cases of this description to degenerate into a mere party struggle. Whether the decision of a committee of this character is regarded as right or as wrong; after it has been deliberately arrived at it should be treated as sacred, and on no consideration should it be interfered with by the Senate.

Senator Sir John Downer

- Would the honorable senator agree to any report of a select committee?

Senator STEWART

- The Elections and Qualifications Committee is not similar to many other select committees. Supposing that we refer the question of the federal capital to a select committee, are we necessarily to be bound by its report ? No, a select committee of that character is not a judicial body ; it is merely appointed to obtain information and report. But the Elections and Qualifications Committee, I submit, is a judicial body.

Senator Sir Josiah Symon

- It decides and recommends.

Senator STEWART

- In other words, it is a bench of justices.

Senator Sir John Downer

- There are no special leaders like laymen-.

Senator STEWART

- The honorable and learned member, I hope, is not charging me with being a special pleader ?

Senator Sir John Downer

- I am.

Senator STEWART

- I am simply stating, what I consider ought to be the relations between a committee of the character of the one we are discussing and the Senate. What law governs this matter?

Senator Staniforth Smith

- What evidence did the mover go on?

Senator STEWART

- We are discussing now the law. What law is applicable to this petition? So far as I have been able to

discover, so far as I think any legal members of the Senate have been able to find out; the only law which can possibly apply is the law of Western Australia, pending the passing of a federal law, governing the determination of disputed elections.

Senator Walker

- Read section 47 of the Constitution.

Senator STEWART

- Has the honorable senator considered what he is referring to ? For a moment I will waive the law of Western Australia, and take that section which says that any question relating to the election of a senator shall be settled by the Senate. We have no procedure, and if the honorable senator's position is the correct one, petitions might be held over the heads of honorable senators until the end of their term? Is that an injustice to which he proposes to subject any honorable senator ?

Senator Lt Col NEILD

-Col. Cameron. - It is not an injustice.

Senator STEWART

- Does the honorable senator for Tasmania know what is involved in this question ? Has it not been pointed out that for every vote which an honorable senator gives when he is disqualified, he is liable to a penalty of £100?

Senator Lt Col Cameron

- If he has done anything wrong.

<page>3014</page>

Senator STEWART

- The public interest, the interest of every one, requires that a question of this character should be brought forward and settled at the earliest possible moment. If we take the position of Senator Walker we have no procedure. A man might allow twelve months to pass before he lodged this petition ; he might make no deposit. There might be no conditions with which he had to comply and the whole thing would be in a state of chaos. But, fortunately, we are not in the position in which the honorable senator tries to place us. We have the law of Western Australia up to a particular point. Of that law the petitioner availed himself, and I consider, although I am not a lawyer, rightly availed himself; because, surely, in the absence of the federal law, the law of the State applied to a disputed election within the State. That law requires that a petition shall be lodged within 40 days; the petition was lodged within 40 days. It requires that a deposit of £50 shall be made; a deposit was made. It requires that the petition shall be lodged with the Clerk of Parliaments; the petition was lodged with that officer. All these preliminaries are very necessary. In the first place, it is absolutely necessary that there should be a time limit. It is desirable, indeed it is necessary, in the interests of the public, of Members of Parliament, and of Parliament itself, that questions of this kind should be settled without unnecessary delay. Therefore, the law lays it down that petitions must be presented within a particular time, and to guard honorable senators against factious, prosecutions, or factious interference with their seats a money deposit is required. All these conditions are prescribed in the interests of everybody concerned, and it is extremely desirable, indeed it is absolutely necessary, that each condition should be complied with. In this case the petitioner was not an ignorant man, as has been pointed out. He had the advice of the best counsel; he was well advised. He complied with every requirement of the Electoral Act. of Western Australia except one. He did not see that his petition was brought before the Senate within ten days, after it was lodged: with the Clerk. Surely that was a portion of his duty as petitioner. It was his duty- to set the court: in motion. When he did not set the court in motion, what then was the presumption? The only presumption, to my mind, was that he had abandoned his case. I would be one of the last to attempt to deprive any citizen of a hearing before the courts of his country on any mere technicality. But this is not a technicality. It is a vital point in connexion with this suit. The provision that the petition shall be referred to the proper court within ten days after it has been deposited with the Clerk is as essential as the provision that it shall be lodged with the Clerk within 40 days after the election. All these provisions are made with one object, and that is to have the question settled as soon as possible; so that the electors shall be represented, and no injury shall be done to the conduct of public business by any: honorable senator not being able to satisfactorily represent his constituents. Seeing that this gentleman did not comply with the last provision of the Western Australian Act, so far as I am able to judge the committee acted quite rightly in throwing out his

petition. If it had not been lodged within 40 days, would not that have been considered a sufficient reason for throwing it out ? If the deposit of £50 had not been lodged at the proper time, I suppose that would have been considered a sufficient reason too.

Senator SirJosiah Symon

- Or if his signature had. not been properly witnessed

Senator STEWART

- If his signature had not been properly witnessed that would also have been considered a sufficient reason. But this is a much more important reason to my mind than any of them, that not only was the petition not referred to the Senate; within ten days after its lodgment with the Clerk, but so far as I can gather it was not lodged for more than a month after it was left with the Clerk. There appears to be some doubt as to whose duty it was to see that it was referred to the Senate. The person who was most interested ought to have seen that it was referred. Evidently he did not do his duty; he did not exercise sufficient diligence in having the matter brought before this court. We have been told- I do not know whether it is true or false - that he asked several honorable senators to present his petition and that they all refused. If he had done at first what he evidently did at last-that was to approach the leader of the Government here- there would not have been any difficulty in the matter.

Senator Clemons

- That would imply that he knew of the condition.

Senator STEWART

- The fact that he asked honorable senators to set the petition in motion before the Senate, proves conclusively to my mind that he knew of the condition. Why did he not do at first what he did at last?

Senator Keating

- Was that after he had deposited it with the Clerk ?

Senator STEWART

- I think so.

Senator Keating

- Is the honorable senator sure ?

Senator STEWART

- I am not sure. I have nothing for it but the statement of honorable senators, and I have not heard it denied yet.

Senator Keating

-Did he not ask honorable senators to present his petition before he went to the Clerk at all ?

Senator STEWART

- I do not think so. As I have said he apparently went to the head of the Government, and. apparently all his steps were taken in accordance with the law of Western Australia. .

Senator O'Connor

-Does the honorable senator say that the petitioner came to me ? I never saw him or had anything to do with him.

Senator STEWART

- Then how did the matter come under the honorable and learned senator's notice ?

Senator O'Connor

- That has been explained already.

<page>3015</page>

Senator Clemons

- Why did the honorable and learned senator present the petition ?

Senator O'Connor

- I think that Senator Clemons was present when I moved the original motion.

Senator STEWART

- The statement of Senator O'Connor places the Senate in a more peculiar position than ever. If the honorable and learned senator had not presented the petition, it might have remained in the waste-paper basket for twelve months. We now find ourselves in a most extraordinary position. Apparently the petitioner dumped down his petition in the Senate, and it was nobody's duty to take it up and see that it was presented to the Senate.

Senator Walker

- That is no reason why we should punish the petitioner.

Senator STEWART

- When a plaintiff brings a matter before a court, it is evidently his duty to see that the court is set in motion.

Senator Sir John Downer

- How many senators did the petitioner ask 1 Apparently he asked three.

Senator STEWART

- I admit .that there is a difference between this Senate and a court of justice. As the honorable and learned senator knows, if a man has sufficient money he can hire a lawyer, and bring any case before a court. .But here it is different; and I think that what the petitioner should have done:- - seeing that there was a time limit in the Western Australian Act - was to bring his case before the leader of the Government, and ask him to set the Senate in motion. He did not do that. I do not know why he did not. I am not inclined to sit in judgment on the committee. We appointed the committee to settle a matter for us, and they have done it. I do not say that we should act illegally, or beyond our powers, but I certainly think we shall be taking a step which will not add to the dignity of the Senate, or be conducive to respect being paid to the decisions of committees of this character, if we refer back the report. I am very sorry that a case of the kind has had to be discussed in this Chamber. In my Opinion all cases of this character should be referred to a tribunal which may be presumed to be entirely impartial. We are supposed to be impartial here, and I hope we are, but at the same time there is no doubt an unconscious party bias which acts, or at least may be presumed to act. That being the case, I think matters of this kind should be referred to a judicial tribunal.

We made the nearest possible approach to that position when ' we referred the matter to a committee of seven of our members ; and now we are asked to take what I consider to be a very improper step by flouting the decision of that committee. I shall certainly support the decision of the committee.

Vice-President of the Executive Council

Senator O'CONNOR

. - I wish to speak in reply.

Senator Harney

- I desire to ask a question on a point of order. Has the honorable and learned senator any right of reply ?

The PRESIDENT

- Yes, there is a right of reply upon every motion, so far as I know.

Senator Harney

- Perhaps I may read the standing order, which makes me think differently. Standing Order 129 says - A reply shall be allowed to a member who has made a substantive motion to the House, or moved the second reading of a Bill, but not to any member who has moved an order of the day (not being the second reading of a Bill), an amendment, or instruction to a committee.

The PRESIDENT

- I think the honorable and learned senator is right.

Senator O'Connor

- - Perhaps, sir, you will hear me before you finally decide.

<page>3016</page>

Senator Harney

- The matter before the Senate was an order of the day, and although the distinction may be drawn by my honorable and learned friend that a motion in respect of an order of the day, was not the order of the day itself, still it was a motion in the form of an instruction to the committee. If the motion was not a moving of the order of- the day - " That the report be adopted," it was an instruction to the committee that they should reconsider their report ; so that it comes under the same category as though it were an order of the day. If you will read Standing Order No. 130, sir, you will' see that it strengthens the position I take up, because it says -

A reply will also be allowed to the mover of a. substantive motion, although the debate thereon, by being adjourned, becomes an order of the day.

So that that shows that the only orders of the day, a debate upon which gives a right of reply, are orders

of the day which have been adjourned. This would not be such a case, so that I think clearly if it is, not a direct motion according to the order on the notice paper, it is an amendment to that order, or at all events it is a motion that the committee be instructed to do something.

Senator Sir John Downer

- It is perfectly clear that it is quite competent for Senator O'Connor to reply. Under the South Australian standing orders when any member moves that a motion of his be made an order of the day, he loses his right of reply. Therefore, when I moved - " That the consideration, of this report be an order of the day for Wednesday next," if I had chosen to speak I should have lost my right to reply.

Senator Sir Josiah Symon

- Senator O'Connor moved this order of the day for yesterday.

Senator Sir John Downer

- He moved nothing of the kind.

Senator Sir Josiah Symon

- Then the honorable and learned senator handed it over to the Government.

Senator Sir John Downer

- I handed it over to nobody.

Senator Clemons

- Why did not the honorable and learned senator move it himself then ?

Senator Sir John Downer

- Why did not Senator Clemons adhere to his views ? I only moved that the consideration of the report be an order of the day for a certain day. If I had moved something consequent upon that report, I should have lost my right of reply, because it was an order of the day. But the matter being before the Senate the Senate had to consider whether action should've taken or not. The objection was raised that no action could be taken except on notice. You, sir, ruled that there was no necessity for any notice, that the matter could be proceeded with at once, and that any honorable senator could move any motion consequent upon the report. Then away goes till this discussion, and away goes the objection, too. The only rule that is laid down in the standing orders of South Australia is that when a member has made his motion an order of the day he has no right of reply. That would have prevented me from replying, but it would not prevent any one else who had moved a motion from replying.

Senator Sir Josiah Symon

- I always admire the fine, airy way in which my honorable and learned friend, Sir John Downer, disposes of these somewhat difficult questions.

The PRESIDENT

- I think it is hardly competent for any senator to debate the point of order as though it were a substantive motion.

<page>3017</page>

Senator Sir Josiah Symon

- My honorable and learned friend attempted to debate the matter, but I will simply refer to the standing orders, and their interpretation. My honorable and learned friend has not put matters at great length ; but I think his resume of the facts is incomplete. He brought up his report and moved that its consideration be made an order of the day for the following Wednesday. In the meantime - I do not say by arrangement, because I do not wish to introduce any polemical matter into the debate - I do not say how or in what manner - it became Government business in the hands of a representative of the Government. On the day for which it was set down the representative of the Government in this Chamber, having the matter in hand, moved that that order of the day be made an order of the day for the following Wednesday - that was yesterday. It then became a Government order of the day for Wednesday. My honorable and learned friend, Senator Sir John Downer, admits that if on the previous Wednesday he, as Chairman of the Committee, had moved a motion he would have lost his right of reply. That gives away the whole position. Yesterday the order of the day, being then in the hands of the Government - having been brought over from the previous Wednesday on the motion of Senator O'Connor - was moved by- Senator O'Connor, and he lost his right of reply in exactly the same way as Senator Sir John Downer admits that he would have lost his right on the previous Wednesday. So much for the argument. The rule, I think, is clear, because as you, sir, pointed out yesterday at my desire, in your ruling as to whether notice should not

have been given of the consideration of this report, that motion was an order of the day upon which any motion which was relevant to it might be moved. Even if the present motion fails it does not exhaust the consideration of the order of the day. Some other honorable senator may move another motion. Suppose the motion before the Chair is defeated - I do not know whether it will be or not - another motion may be immediately moved for the adoption of the report. The consideration of an order of the day is only exhausted by a motion taking it off the paper. The consideration of the report is an order of the day, and Senator Sir John Downer will admit that if he had moved it . in the first instance he would have lost his right of reply.

Senator O'Connor

- During the course of the debate; my action as leader of the Senate has been impugned-. Questions have been asked of me as to why I took a certain course I only say that it is quite characteristic of--

The PRESIDENT

- Will the honorable and learned senator confine himself to the point of order ?

Senator O'Connor

- I intend to confine myself to the question of order? I do put it to you; sir, that the facts I mention are matters which would be considered if the interpretation was at all doubtful. I do not think that it is. I submit, with all respect; that the contention of Senator Sir John Downer is the correct one. You will remember, Mr. President; the history of the matter. Senator Sir John Downer laid the report on the table, and moved that its consideration be an order of the day for the following Wednesday. Before that date came round, I received a letter and a telegram from Senator Sir Josiah Symon asking me to postpone the matter for a week. At his request, as it appeared amongst the orders of the day, and as I was in charge of the Government business, I moved the adjournment of the matter for a week. Does the honorable and learned senator say that; because I moved the adjournment of the matter, I am now deprived of my right of reply ?

Senator Sir Josiah Symon

- No.

Senator O'Connor. - I am simply taking the matter step by step. I only placed the motion on the business-paper in its order for a subsequent date. Then we came to the day on which it was moved. The order of the day then for discussion by the Senate was Senator Sir John Downer's motion that it should be taken into consideration. That honorable and learned senator might have moved it if he had thought fit. He did not move it. On that I then moved, as a matter of privilege, as I am entitled to do, the substantive motion. If I had not moved the substantive motion the matter would have lapsed; Senator Sir John Downer not having made any motion.

Senator Sir Josiah Symon

- It would not have lapsed;

The PRESIDENT

- Unless some one had moved a substantive motion it must have lapsed.

Senator O'Connor

- Undoubtedly. Senator Sir John Downer said he was not going to move it :no one rose to move it. It was a matter of privilege which I was entitled to deal with as leader of the House, and. in reference to that matter, I moved a substantive motion. How can it possibly be said, therefore, that this is a ground for shutting out a reply in such a matter. I submit that there is no ground at all for the point of order.

<page>3018</page>

The PRESIDENT

- This, is a motion which has been described as being Government business. It is a matter of privilege; A question in regard to the seat of an honorable senator is always a matter of privilege. It was put on the notice-paper at my direction: as a matter of privilege. The question I am asked to decide is this - Can Senator O'Connor reply, he having moved a substantive motion on a resolution of the House that a certain matter be taken into consideration? The fact that Senator O'Connor postponed the consideration of this question last Wednesday has nothing to do with it. When the matter was first put down the order of the Senate was as follows.: -

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

That was done on the motion of Senator Sir John Downer. When the question was called on any

honorable senator could have moved any motion relative to the subject matter of this report of the committee. Senator Sir John: Downer did. not move it, but Senator O'Connor did move it, and I think he is entitled to a reply, for this reason. Standing Order. 129 forbids a reply to any member who has moved an order of the day, not being the second reading of a Bill, because, that order of the day has been set down and made an order of the day by the honorable senator moving it. If the honorable senator did not take the opportunity which he might have taken of making it a notice of motion- and if it had been a notice of motion he would have had the right of reply - and if he chose to make it an order of the day, then he took the consequence of having no right of reply. I think that a reply should be permitted to Senator O'Connor. Senator O'CONNOR(New South Wales - Vice-President of the Executive Council), in reply - I am glad that the forms of the

Housedo not allow the success of the attempt: which has been made to close my mouth in reply, after a series of attacks upon me extending pretty well over two sittings.

Senator Harney

- It was a compliment to your powers-

Senator O'CONNOR

- That is the honorable and learned senator's way of putting it; but I think most people who have heard what has gone on here, and who have heard the honorable and learned senator's attempt to close my mouth, will describe it in a very different way. I am not going to say any more about it. I have my right of reply now, and I hope I shall be able to satisfy the Senate that not only was I right in the course I took in moving this motion, but that there is abundant justification for my statement all through that in taking the charge and conduct of these proceedings - in referring this petition to the House originally - I took the only course open to me as the leader of the Senate-. I do not regret that this debate has taken place, because if it has proved one thing more than another, it has proved that human nature is the same now as it was 130 years ago; when Grenville's Committee Bill was brought into the House of Commons, and when it was almost impossible to prevent a tribunal of this kind from being swayed more or less by party feeling. I give every credit to some honorable senators here for the candid and bold manner in which they have stood out for justice against any claims of party, but there are other honorable senators who have unfortunately allowed themselves to be influenced by the party aspect which has undoubtedly been given both openly and privately to the discussion that has been going on here. Two honorable senators- spoke; and spoke strongly, in favour of my motion. I am rather curious to know whether they are going to vote for that motion. I am rather curious to know whether they are going to substantiate by their votes the opinions they have expressed in the Senate.

Senator McGregor

- They may have been converted. Can they not change their opinions ?

Senator O'CONNOR

- If they do not vote for the motion, then I would like to know the reason why ? An honorable senator asks - "Can they not change their opinions " ? Of course they. can. They can also change their vote, although they may not change their opinions. When I find those two honorable and learned senators warmly supporting- the- view that I put before the Senate, then I say that if they are in the Senate, or within the precincts of the Senate, and refuse to vote, or vote on- the opposite side to their convictions, as expressed, I am justified in contending that there has been a party aspect given to this matter.

Senator Harney

- I rise to a point of order, Mr President.

Senator- O'CONNOR.-I hope the honorable and learned senator will have better luck than he had last time:

Senator Harney

- Is the honorable and and learned senator in order in attacking two honorable senators in anticipation of their doing something that they may not do ? Is it fair to impute motives to honorable senators in their absence?

<page>3019</page>

The PRESIDENT

- I think that the honorable and learned senator is in order in saying that certain honorable senators have spoken in a certain way, and that he is anxious to know whether they will: vote in accordance with their

expressed opinions.

Senator O'CONNOR. - I sympathize with Senator Harney in his failure a second time to bring a discussion. I know that he does not like it, but he will have to put up with it, just as we have had to put up with his disquisition upon the so-called question of law determined by the committee. I have been attacked because of my action, not only in regard to this motion, but Senator Clemons has gone so far as to question my right, and indeed my motives, in taking the action which I did in the first case in bringing this petition before the Senate. I moved the motion which Senator Clemons referred to on the 27th June. I do not remember whether the honorable and learned senator was actually in the Senate at the time, but I find from the records that he took part in a division on another question a very few moments later. I think there is very little doubt that the honorable and learned senator, who is a regular attendant here, was in his place and heard this motion moved. At all events; other honorable senators were here and heard it. I explained then my reasons for making the motion. There was no question raised then, and why is the question raised now ? It is raised because it becomes important to use every argument and every device in order to make this a party question and to rouse party bias. That is why the question is asked now. What was the reason of my action ? Let me call the attention of the Senate to what the position of this House was when it met here and became open to receive petitions from any elector of any of the States of Australia which had a right to send representatives here, It does seem to me that the attitude which many honorable senators have taken up is that we are here 36 honorable senators, and that we must lock hands, if possible, and see that we do not lose any of our number ; that we must be careful to use every technicality in order that the charmed circle shall not be broken by some elector who has a petition to present. That is the attitude which has been taken up by some honorable senators who have spoken. I venture to think it is not the attitude which will commend itself to the Senate, and it is not the attitude which, in the opinion of Australia, the Senate ought to occupy. What is the position of the Senate? The Constitution was obliged to provide that the first elections should be conducted according to the laws of the States so far as applicable. There was no other method of arranging for the conduct of elections. The Constitution also provided that in regard to disputed returns the Senate should be the court- to try those disputed returns. That is perfectly plain. That is what the position was. It is true that no procedure was laid down. No procedure could be laid down. The Senate had to meet. The Constitution gave the Senate the right and authority to meet and deal with these petitions as it thought fit; it left the matter entirely in the hands of the Senate, as it left it in the hands of the other House to deal with. In these circumstances would any one contend for a moment that there are any rules of procedure whatever which bind the Senate or any petitioner who chooses to come to the Senate and ask our opinion upon a disputed return ?

Senator McGregor

- That is a new interpretation of the Constitution.

Senator O'CONNOR

- It is not new. It is not only not new, but it is an interpretation which has had the sanction of so high an authority as the honorable and learned senator, who in the committee carried the motion that this petition should not be entertained.

Senator Sir Josiah Symon

- The majority carried it.

Senator O'CONNOR

- The majority carried it ? Do we not all know that it was put forward as a question of law, and is it not quite evident that as the honorable and learned senator's following were laymen, those honorable senators would take his lead?

Senator Sir Josiah Symon

- What right has the honorable and learned senator to talk about my following ? There were two of the honorable and learned senator's own supporters.

Senator O'CONNOR

- I have a right to talk in that way. The honorable senator's following were laymen, and they probably took the high authority of the honorable and learned senator as a lawyer, and followed him in regard to this question,

Senator Harney

- -Probably he was right.

Senator DAWSON

- They were wise men.

Senator O'CONNOR

- It remains to be seen whether they were wise men.

Senator Sir Josiah Symon

- And the honorable and learned senator is going to appeal to the Senate ?

Senator Sir John Downer

- The honor and learned senator is not the only man in the world.

Senator Sir Josiah Symon

- And the honorable and learned member is not.

The PRESIDENT

- Order ! I must ask honorable senators not to conduct conversations across the chamber.

Senator Sir Josiah Symon

- I ask, on a point of order - Was the observation of the "Vice-President of the Executive Council a proper observation to be made ?

The PRESIDENT

--! do not think it was ; but I think the honorable and learned senator brought it on himself, c Senator Sir Josiah Symon. - I challenge that ruling, sir, with ' great respect. I did not say a single word.

The PRESIDENT

- The honorable and learned senator will take his seat. He was interjecting more than any other honorable senator.

Senator Sir Josiah Symon

- I did not interject so far as. the honorable the Vice-President of the Executive Council was concerned.

<page>3020</page>

Senator O'CONNOR

- I am- glad the honorable and learned senator is able to preserve so calm and judicial a manner in dealing with this question. I was pointing out when I was interrupted what the position of the Senate was in regard to procedure. I say there was no procedure, and that was admitted by Senator Sir Josiah Symon himself.

Senator Sir Josiah Symon

- There was no procedure.

Senator O'CONNOR

- And the honorable and learned senator further admitted that, apart from the action of the petitioner himself, the procedure under the law of Western Australia did not apply.

Senator Sir Josiah Symon

- That was my individual opinion.

Senator O'CONNOR

- The honorable and learned senator, I presume, does not give any thing more than his individual opinion. I do not know that it has any other effect than as his individual opinion. That being so, I say that I have not only my own view and the view which appeals to every man, lawyer or layman, in this Senate, but I am supported by the high authority of my honorable and learned friend opposite, in saying that the Senate was absolutely without procedure, and was there as a court appointed by the Constitution to try any question of a disputed election which might come before it. That being the case, I say that this Senate, which was made the court to determine the validity of the seats of its own members, should, above all tribunals, take care that there is nothing in the way of burking inquiries, and nothing in the way of blocking petitions, and that by no action, and by no inaction, should it in any way prevent a petition from any person on a disputed election from being heard. That being the case, I found that on the 23 rd May a petition was lodged in this House against the return of Senator Matheson. It was lodged with the Clerk, it was signed and witnessed with all proper formalities, a deposit was paid at the same time, and I say in regard to all these preliminaries, as they may be called, that under the law there was no necessity for any of them; under the law this petitioner had a right to present his petition properly signed, and if he satisfied the Senate that it was a bond fide petition and properly presented, I say there is no lawyer in the world, no

lawyer, at all events, in this Senate, who would have the audacity to contend that we could impose any regulations or procedure in dealing with that petition.

Senator Harney

- No lawyer did contend it.

Senator O'CONNOR

-I know some persons have contended it ; I do not say any lawyer contended it. I will come to the legal contentions by-and-by. Under these circumstances, I found, as I say, in conducting the business of this House that this petition had been properly lodged with the Clerk on the 23rd May. We have had some marvellous mental gymnastics in order to prove whether the court was the Senate, or the Senate was the court, and one honorable senator went so far as to prove, in the most correct form of syllogism, that the Clerk was the court. It was very amusing and very interesting, but I do not think any one has paid much attention to it.

Senator Clemons

- It was the reductio ad absurdum from the honorable and learned senator's own argument.

Senator O'CONNOR

- I am reminded by the honorable and learned senator's heated interjection that it was he who made use of the argument. I say that there was no other way by which the petition could be brought before the Senate but by being lodged with the Clerk. Has a petitioner a right to walk in here and put it on the table ? Has he the right to hand it to the President ? What else can he do if he wants to bring his petition before the Senate but hand it to the Clerk ? He did that, and I say that when it was in the hands of the Clerk it was in the hands of the House, which has been constituted by the Constitution the tribunal for considering the petition.

Senator Harney

- Why present it then ?

Senator O'CONNOR

- That being so, what was the next step ? There is no doubt that if this petitioner had been able to find some honorable senator to present the petition no question could possibly have been raised as to the mode in which it was placed before the Senate. But we hear that the petitioner went to two persons, I think it was said, to endeavour to have the petition presented, and they refused to present it. What was his position then ? Was he bound to go round to every one of the 36 members of the Senate in order to get justice ? Was he bound to go cap in hand to every one of them, and would he have lost his right if no honorable senator had been willing to present the petition ? .

Senator Harney

- He knew that dozens would be ready to present it if he asked them.

<page>3021</page>

Senator O'CONNOR

- I say it is ridiculous for any man who claims to be a lawyer, or to know anything about the principles of law, to say that this man was to lose his right because no member of the Senate would present his petition.

Several Senators. - No one said that.

Senator O'CONNOR

- It is 'better that twenty honorable senators -opposite should not speak 'at once. I do not suppose this is palatable or -pleasant, but they . had -better take it in -patience. Under these circumstances what was the -position of 'this petitioner? He was given a -right ' under the Constitution, and I -say he had done everything that was necessary -in -order to have his petition heard when he lodged it with the Clerk. I 'held the opinion, and I held it very strongly, 'that 'that -was the right of the petitioner ; -and I felt also that so long as that petition remained -here 'there was a shadow on the title of Senator Matheson, whose seat was in question. What- was to be done ? There was -no limit of time in which this 'House could take some action, -and within which 'the petition might be 'acted upon ; and I felt it was only -right and just, first -of all to the senator concerned, to see that this matter was brought to a conclusion one way or the other. 'Secondly, it was only right to the -petitioner that this-case should be heard, and thirdly, it was only in consonance with the duty of the Senate, to the electors of Western -Australia, to the petitioner, and to the 'sitting member, to see that some method 'should be -adopted by which the petition should 'be . brought

'before the -House. ; When we came here we were without "standing orders ; were we therefore impotent to carry on the business of the country? We found some way of getting through our 'business, -and we formed -our own -rules' of procedure.

Senator McGregor

- We have the right to do that.

Senator O'CONNOR

- We were bound, therefore, to form some rules of . procedure, and take some 'action in the- novel circumstances which had . arisen in this-case, and it rested with me, -as not only a representative of the Government here, but it rested with me, -in occupying what I venture to say is a -much higher position than that of representative of the Government - that is the leader- of the Senate - to -act for the Senate, and -to see that -justice was done by the Senate to the petitioner, to the member concerned, and to the Senate itself. In what way could justice be done? In one way only, and that was by bringing this 'petition before the Senate in such a way that it could be dealt with.

Senator McGregor

- Would it not -have been as well to do it a fortnight sooner ?

Senator Sir JOHN DOWNER

- There -was no 'court a fortnight sooner.

Senator O'CONNOR

- I am not going to be "interrupted. I had to determine what course of action had to 'be taken; I did not 'come to' a determination without very careful consideration. I found, in the first -place, that a similar 'condition of things -had arisen- in the -other -. House. What 'was done there'? A, petition -there was lodged with the Clerk; but did it remain with the Clerk ? Did it remain, as has 'been- said 'by one honorable senator, -kicking about the office of -the- Clerk waiting" for some one -to present it? No; the course taken there was that the Speaker laid it on the table of the House. I find that that occurred on the 13th June, and there is this reference to the matter -

Mr. Speaker (presented a petition which he had received from William Eddrup Adcock, of Derby, in the State of Western Australia, against the return of Elias Solomon -as member for 'Fre- mantle, in the said State.

Mr. Barton, the leader of the "House, then -moved -

That the said- petition be 'referred to the Committee of Elections and Qualifications for inquiry and report.

Senator Pearce. - Who moved on the second occasion ? It was -Mr. Mahon,- a private member.'

<page>3022</page>

Senator O'CONNOR

- . An unfortunate habit of irrelevance leads the honorable senator wrong, the honorable senator should stick to the point; we are not dealing now with the second occasion, tout -with the . first. I am dealing with the action which was taken in the other House by the leader of the -House there. I say there is no question about it that that was the right procedure - that the petition once being- in -the House -it was the duty of the leader . of that House to refer the petition -to the Elections and Qualifications Committee. What difference did it make-that the Speaker presented the petition ? -Here it was in the -House -and- in the -hands of the Clerk. Some -body had to bring -it forward, -and under the circumstances; it became a question whether the President should bring it forward or whether I should take the responsibility of myself presenting the petition, and taking action -upon it afterwards. Under these circumstances, I took the liberty of consulting the President himself, and the President has given me -leave to mention what took place between us. I saw the President about the matter ; I think it was after the Elections and Qualifications Committee had been appointed, or had been moved for. I then discussed with him the question of whether it would be better for me to lay the petition on the table of the Senate, or whether he would take that course. The President told me then, that if the petition had been handed to him at once, he might have laid it on the table just as Mr. Speaker did in the House of Representatives ; but that, as it had been lying so long in the office, it was more desirable that I should take upon myself the responsibility of presenting the petition in the ordinary way. I took that course. I believe it was a right one. I -mention it now not for the sake of throwing any responsibility on the President, because the course I took I believe to have been right, and I am willing to take the full responsibility for it ; I mention it now, because I wish to point out that I did not take this step hurriedly, or without full inquiries, or without being fortified by the

highest authority in the Senate.

Senator Clemons

- Did the honorable and learned senator take that course with reference to the Western Australian Act?

Senator O'CONNOR

- I had no more idea of looking into the Western Australian Act than into an Act which would regulate elections in Timbuctoo, because the Western Australian Act had nothing to do with it.

Senator Clemons

- Mr. President, I ask you to allow me--

The PRESIDENT

- The honorable and learned senator can not rise except to a point of order. I will explain to Senator Clemons, and to the Senate generally, that no senator can interrupt a speaker except on a point of order, or to ask that the words be taken down, unless the honorable senator who is addressing the Chamber himself gives way. Until the honorable senator addressing the Senate sits down no senator can interrupt; but any senator who considers that he has been misrepresented can rise at the close of the speech and offer an explanation.

Senator Clemons

- I was going to request your permission, sir, to ask Senator O'Connor to let me say a few words.

Senator O'CONNOR

- The honorable and learned senator has said a good many words. About ten other senators 'would want to say "a few words" if I sat down. Therefore, I am going on. For the reasons I have given I took that course with the petition. I did so with the fullest sanction of the highest authority in the Senate, and it was the only course that could have been taken in order to enable the Senate to carry out the functions which the Constitution -had placed upon it. On the 27th June I moved a motion for the reference of this petition to the Committee of Elections and Qualifications. I then stated the reasons for making that motion. Now, sir, I do say that the charge that that motion was: made for some indirect motive - which has been suggested here - is absolutely without foundation. I do admit that there are minds that are always groping in the gutter for some low motive for everything that is done; but I confidently appeal to any man of candour and honesty of feeling in this matter to say whether, as the leader of the Senate, I could have taken any other action under the circumstances.

Senator Harney

- No one attacks the honorable and learned- senator's motives.

Senator O'CONNOR

- It has been stated that it was a most curious thing that I presented the petition.

Senator DAWSON

- It was a most unusual thing.

<page>3023</page>

Senator O'CONNOR

-It was; because we were in the position for the first time in the history of Australia of -having to deal with this particular set of facts. There is no doubt that under these unusual circumstances we were obliged to form our own procedure. We were masters of our own procedure, and in whatever position this Senate maybe placed in time to come, I hope there will always be some one in the position of leading the Senate who will 'at all events have the courage to take what he believes to be the "right course, in the interest of the Senate and of the Commonwealth, regardless of whether there is any precedent for it or not. If we are to be bound by precedents - if we are not to move hand or foot unless we can see a precedent in conformity with what is proposed to be done -our progress will be slow and halting indeed in the working out of this Constitution. So much with regard to my action in presenting this petition in the first instance. The matter went to the committee, and the committee brought up their report. It has been already discussed in all its details. When I saw what the report was, and looked into the Western Australian law, I came to this conclusion: that the contention of law upon which that report is founded is so grotesque that I do not believe anything like it exists outside the realms of comic opera. I cannot imagine any lawyer appearing before the most ignorant, stupid bench throughout Australia and having the audacity to put such a proposal before the bench as is involved in what is called the legal question affecting this case. Seeing that, I determined that whatever action might be taken by the Chairman of the Elections and

Qualifications Committee, so far as I was concerned, I would see that there was not left upon the records of this Senate such a blot upon its intelligence and fair dealing, in connexion with the right of petition, as would be implied by the adoption of the report. I have used what may be considered strong language, and I shall justify it. There is no use in mincing matters. I have a very strong opinion about the decision of the committee; and I shall now state very particularly my reasons for that opinion. It is said - it has been admitted - that the procedure of the Western Australian law would have nothing to do with this matter but for the action of the petitioner himself. To make that perfectly obvious to any honorable senator who has not studied the Act for himself, I should like to point out that the two sections of the Western Australian Act - 146 and 147 - relate to taking a petition before the court of disputed returns in Western Australia, and have no relation to anything else.

Senator McGregor

- I thought we were to carry out the same procedure as far as practicable.

Senator O'CONNOR

- I will come to that in a moment. The petition is to be lodged with the Clerk of the House affected - that is the House of Western Australia. It is to contain certain signatures and other matters of that kind, to which it is hardly necessary to refer. There is to be a deposit; and that is all which has to be done by the petitioner under section 146. Then we come to the next section, 147, which relates to something which has to be done by the House. What House? The House of Western Australia. What has to be done? 1 All petitions shall within ten days of the same being received be referred to the court.

That is to say, shall be referred by the House of Western Australia to the court of Western Australia. Can any one wonder, therefore, that even my honorable and learned friend, Senator Sir Josiah Symon, made the admission that the law of Western Australia, in these two sections, apart from the action of the petitioner himself, had no application whatever to the procedure in reference to this petitioner. I took the view which, as it appears now, the honorable and learned senator himself took. When I found that the report of the committee stated that -

The petitioner has not conformed with the electoral law of the State of Western Australia, I formed, as I have said, a very strong opinion as regards "the decision" of the committee; because it did appear to me that if we were going to dismiss a petition because the electoral law of Western Australia had not been complied with, we were laying down the position that in every case where a petition was before this Senate for consideration, the procedure of the State from which the petition came was to be followed. That is not a position which this Senate ought to take up, and it is a position which I desire should not appear upon the records of this Senate in any way.

Senator DAWSON

- Would Senator O'Connor mind reading section 10 of the Commonwealth Constitution Act?

Senator O'CONNOR

- I will read it after the Senate has adjourned, if the honorable senator does not mind. Now, sir, when I heard Senator Sir Josiah Symon, I found that the case was even stronger against the position of the committee; and that the absurdity of this so-called legal contention was still more transparent. What is the honorable and learned senator's position? He said - "True, the law of Western Australia in those sections does not apply; but, as there was no procedure, this petitioner himself, because he did what is required under section 146, thereby elected to be bound by the procedure of Western Australia, and we will hold him to it."

Senator Sir Josiah Symon

- That is not what I said.

Senator O'CONNOR

- That is what the honorable and learned senator said in half a dozen different ways. It was not only said by the honorable and learned senator, but by others who followed him on the same side.

Senator Sir Josiah Symon

- Nothing of the kind.

<page>3024</page>

Senator O'CONNOR

- I am not going to enter into a personal disquisition with the honorable and learned senator. This debate has been continued at such length, and Senator Sir Josiah Symon has stated his contention in so many

different -ways that I do not think there is any doubt about it.

Senator Harney

- It was my contention.

Senator O'CONNOR

- That was Senator Harney's contention ; I was going to say the contention of Senator Sir Josiah Symon's learned junior. Surely it is carrying legal procedure to a length that was never "heard of before to say that where you are dealing with a petition in regard to a matter in which there is no procedure laid down, because a man has himself carried out the conditions of an Act of Western Australia, therefore you are to compel him to follow every provision of that Act regarding petitions.

Senator Harney. When we have no other procedure at all.

Senator O'CONNOR

- What is the position to which that leads honorable senators ? If instead of presenting this petition to the Clerk within the proper time, signing it properly, witnessing it properly, depositing the money properly, the petitioner had simply put in the petition signed by his own name, no such action could have been taken upon it ; but because he did something which gave full evidence of bona fides on his part he is not to be heard, because he failed to carry out this provision -

All petitions shall within ten days of the same being received be referred to the court.

That is to say, because he did not do something which in Western Australia he could not have done-- ,

Senator Staniforth Smith

- He was not in Western Australia.

Senator O'CONNOR

- If the honorable senator makes an observation of that kind he is hopeless. I say that the committee imposed upon the petitioner a condition which if he were in Western Australia he could not carry out. The provision of the section has to be given effect to by the House of Parliament. The petitioner cannot compel the House to do it. He cannot enter the House and insist upon it doing it. If the House should do nothing the petitioner cannot force it to do something. Yet this is the position that some honorable senators would force upon the petitioner in order to shut him out from the right to petition this Senate. I said there is nothing so grotesque as this outside the realms of comic opera, and I maintain that I have proved the statement. To find anything like this we would have to go back about 130 years, to the time when the House of Commons used to decide election petitions without any other consideration than that a particular party was sufficiently strong to carry a decision. We can understand that in those days such grotesque pieces of injustice were often done, as a matter of course, when the House was the tribunal for deciding election petitions ; but we must remember that that is not the position now. We are called upon to decide this issue not in the tumult and excitement of a party fight, and in a House divided by strong party lines. The conclusion of the committee is supposed to have been come to by a body, solemnly sitting to carry out its duty of inquiring and reporting. The honorable and learned senator Sir Josiah Symon assured me that this decision was come to honestly, and I am bound to take his assurance. It is, however, impossible to understand how any such decision could have been arrived at, and it is equally impossible to allow such a decision to stand upon the records of any House which has any respect for itself. Now, sir, finding that this was the position - a position which, as I say, is even more absurd and grotesque than we thought was possible for an instant from those who were responsible for it - finding that the report was brought before the Senate, and that the Senate would be asked to adopt it, what was the position which arose? The honorable and learned senator who was naturally in charge of the motion, I mean Senator Sir John Downer, whose just duty it was as the representative of the committee to lay the report on the table of the Senate, and, if he approved of it, to move its adoption - took a certain course with regard to it. I find from the honorable and learned senator's statement, made to the Senate, and from what he stated to me, that he intended to consider whether he would take the course of moving the adoption of the report or not. The honorable and learned senator informed me just before the Senate met-

Senator Clemons

- Outside?

Senator O'CONNOR

- Yes.

<page>3025</page>

Senator Clemons

- That has already been denied by Senator Sir John Downer. He denied conferring with Senator O'Connor.

The PRESIDENT

- I must ask Senator Clemons not to interject so much.

Senator Clemons

- These are misstatements. I am attempting to correct misstatements.

Senator O'CONNOR

- I really do not know to what lengths Senator Clemons will go. He now says that these are misstatements. What I say is that on the afternoon when this motion was to come on, just before the Senate met, Senator Sir John Downer told me that he was not going to move the motion for the adoption of the report. That being so, what was the position of things 1

Senator Sir Josiah Symon

- On what day?

Senator O'CONNOR

- On the day on which it was moved.

Senator Sir Josiah Symon

- On Wednesday week ?

Senator O'CONNOR

- No ; Wednesday week was the day on which I postponed it, in order to suit the convenience of the honorable and learned senator. The occasion on which the Chairman of the Elections and Qualifications Committee informed me - and the only occasion on which he informed me - that he was not going to move in the matter was on the very afternoon on which the motion was actually moved. Therefore I say that in these circumstances my position was this : I had already taken occasion to see that the petition was brought before the Senate. I found that a report had come back from the committee, which was such that I thought the Senate on every ground ought not to agree with it. I found that the honorable and learned senator, who was in charge of the report, was not going to make any motion in regard to it.

Senator Sir Josiah Symon

- The Chairman said in the Senate that he would consider whether it would not be his duty to deal with it.

Senator O'CONNOR

- I know he did. After all there is no use in the honorable and learned senator trying to lead the Senate off on a false scent. It is useless to try to lead the Senate away from this grotesque piece of legal subtlety - which Senator Sir Josiah Symon has put upon the report that is before us. " Senator Sir Josiah Symon. - That is mere vulgar abuse.

Senator O'CONNOR

- As a matter of privilege affecting the position of an honorable senator, it became necessary for me, as leader of the Senate, to take some action. I have no doubt honorable senators are familiar with the procedure which is laid down in May. We find in May that -

The -quality of privilege and the consequent right of immediate consideration does not depend solely on the nature and object of the motion, but may be imported or withdrawn by the circumstances that attend the motion. As a matter affecting the seat of a member of the House is a matter of privilege, precedence is accorded to a motion for a new writ when such motion is made without notice.

Perhaps it is hardly worth while referring to an authority in respect of that position. It is undoubted that when a question arose in regard to the seat of an honorable senator, and in regard to leaving on the records of the Senate, without protest, a report such as that of the committee, there was only one course for me to take as the leader of the Senate, and that was to see that the report, so far as I could influence the Senate in that direction, was referred back to the committee for consideration and report, with an expression of opinion by this House upon the question of law which was raised by the proceedings. That being so, I took the action in question. It is said that the Senate has no right to interfere or to refuse to adopt this report. '

Senator Harney

- It ought not to do so.

Senator O'CONNOR

- Ought not? If comes to the same thing. The Senate having appointed a committee to deal with this matter, it is said that it is bound by the report of the committee. I deny that absolutely.

Senator DAWSON

- No one contended that ,

<page>3026</page>

Senator O'CONNOR

- Senator Dawson was not here when some very wild contentions, which he would not have approved of, were indulged in in regard to this particular matter. No honorable senator would doubt for one moment this position. It is true that in the House of Commons, before a court consisting of Judges was created - a court of disputed returns - power was given to a committee to inquire into and determine questions of disputed elections. In New South Wales, in Victoria certainly, and I think in some other States - wherever there is no court of disputed returns - a statute has been passed constituting a committee, which committee is given power to hear and determine these questions of disputed elections. All these statutes provide that when that committee comes to a determination in support of a petition, the seat of the honorable member affected becomes vacant. In all those instances the power is given to the committee to determine ; the committee does determine, and statutory effect is given to its determination. But we did not put this committee in that position.

Senator McGregor

- We had no power to do it.

Senator O'CONNOR

- I do not know whether we had such a power or not. It may be that the Senate has to decide it. The principle may be right. It may not be, perhaps, in the power of the Senate to hand over its functions absolutely and without recall to a committee. I do not wish to express any opinion on that point at all. The course which the Senate took was that it did not put the committee in any such position, but it put it in the position of inquiring and reporting. I do not care who the members of the committee are ; I do not care how eminent or how learned they are ; they are only members of the committee of this House, and their duties are only to inquire and report. What they do is subject to the approval or disapproval of the Senate, and it does seem to me that it is taking up an attitude which I might describe, I hope without offence, as altogether too petulant to be indulged in, to assume that because the Senate does not approve of the report that therefore the committee is to talk of resigning. I say that the Senate will not submit to dictation upon those grounds. The committee has a certain duty put upon it. It has to inquire and report, and it must be recognised that its position is only the position of inquiring and reporting. If the Senate thinks fit to refuse to accept the committee's report, I hope they will take that action without any suggestion that there is an insult or any flouting of the committee intended. It must be obvious that if an attitude of that sort were assumed by the committee, we should be in the extraordinary position that the business of the House would be deputed to committees over whose decisions we should lose control, and we would gradually give away our powers and duties to be performed by deputy. I do not think there is any question at all about the position which the committee ought to assume. I therefore say that if the committee are wrong, if they have put a decision upon the records of the House, and have asked us to affirm that which takes away the rights of this House, which takes away the rights of petition without any just foundation, they must put up with it if their report is not accepted.. The only position we can take up is to express our opinion and to send it back to the committee to come to a determination upon it.

Senator Clemons

- But what if they come to the same determination again ?

Senator Harney

- Is there to be nothing sacred about it ?

Senator O'CONNOR

- I do not see anything sacred about it.

Senator Harney

- Look at the nisiprius cases.

<page>3027</page>

Senator O'CONNOR

- If the honorable and learned member would get away from the methods and precedents of the Nisi Prius courts we should do much better. We have nothing to do with an analogy of that sort. It has no bearing here. I say that where a committee is appointed, not with a right to determine, but to inquire and report, its report can be considered in the freest and fullest way, whether it is upon law or upon fact. I admit at once that if after full inquiry the committee came to a conclusion upon any question of fact, I, for one, would be very both to disturb it, whatever the conclusion might be. I have said so already, and I still say so ; but the position is altogether a different one. What would be the result of shutting out inquiry, and shutting it out on grounds which on the face of them are without foundation? The American Houses are very much in the same position as we are in dealing with these bodies, and for the benefit of my honorable and learned friend, Senator Harney, I would like to quote from an authority which he will admit is a good one. Gushing, at page 63 of his volume on The Legislative Assembly in the United States of America; writes - In all the Legislative Assemblies of the United States, therefore, except those in which the subject is particularly regulated by law, questions relating to the rights of membership are consequently to be investigated and determined in the ordinary course of proceeding. Two methods only appear to be in use, namely : first, a trial at the bar of the Assembly, in which the case is investigated directly, and decided upon by the Assembly itself ; and second, a preliminary investigation by a committee, and a final determination by the Assembly on their report. These modes of proceeding will be explained hereafter. When the latter mode is pursued, it is the duty of the committee to report and state the particulars of the proof, as well as their conclusion thereupon ; the House not being concluded by the opinion of the committee in matter of fact, any more than in matter of law.

That is exactly the position in which the Senate stands to-day. The committee has reported, and that report is before the Senate. I have asked the Senate to take the course of referring that report back for consideration, and with an intimation from this House that in our opinion there is no law preventing the committee from hearing the petition. I have been asked what position the committee will take up. They are in this position : They go back to consider the petition under the direction of the House upon this particular question, and they are bound to hear the petitioner. They have only one duty - and that is to inquire into and report. If this House sends them back to inquire and report, with the intimation that there is no law which prevents them from hearing the petition, then, unless some new law point arises, there is nothing to prevent them from hearing it. I have nothing more to say. I am thankful that the forms of the House have given me an opportunity of replying to the attack made upon me, and of stating my position - an opportunity which my honorable and learned friends opposite would have denied me if it had been possible.

Senator Harney

- There was nothing sinister intended.

Senator O'CONNOR

- I quite admit that there was nothing sinister about it, and I hope that there never will be in connexion "with what is done in this House. Although my friends are sitting on the left, I am certain there is nothing sinister about anything they do. I hope the Senate will come to a conclusion upon this matter without party bias or party feeling, but upon the consideration only of what is right in the interests of the petitioner and of the sitting senator, and what is right also in the interests of the State of Western Australia, which is entitled to have her representative here in accordance with the law of Western Australia as it regulates elections in that State. If the law has been violated, then the honorable senator who sits here has no right to do so. If it has not been violated then no one will be more pleased than myself to see that the cloud is removed from the title of that honorable senator to sit here. Whichever it is, I hope we will remember that we have no right to take up the position of defending by every technicality the seats of every honorable senator here, when the Senate is the court itself to try the validity of those seats. It would indeed be a bad thing for the influence of this House, it would indeed be a sorry day for the Constitution, if ever it came to be said that in our early days of exercising the power which the Constitution has given us, we tortured and twisted the law in order to protect one of ourselves from the exercise against him of that right of petition which is given by the Constitution.

Senator Lt Col NEILD

- I desire to make a personal explanation in reference to the vote I propose to give.

The PRESIDENT

- The only standing order under which the honorable senator can speak, is Standing Order 128. He may offer an explanation in regard to any material part of the subject, but he cannot introduce any new material.

Senator Lt Col NEILD

D- Under these circumstances I cannot vote.

Question put. The Senate divided -

Ayes 13

Noes 11

Majority 2

Question so resolved in the affirmative.

CHAIRMAN OF COMMITTEES

<page>3028</page>

Vice-President of the Executive Council

Senator O'CONNOR

. - I regret to have to inform the Senate that the Chairman of Committees is unavoidably absent owing to illness in his family. Under the circumstances I move, and I do so at his request -

That in the unavoidable absence of the Chairman of Committees, Senator Dobson do take the Chair of Committees of the whole for the remainder of the sitting.

Question resolved in the affirmative.

PROPERTY FOR PUBLIC PURPOSES ACQUISITION BILL

In Committee (consideration resumed from 18th July, vide page 2690) :

Postponed clause 44 -

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

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

by allotting to the State debentures or stock of the Commonwealth of the face value of the amount of such compensation, and bearing interest at 3 per cent ; (c) by relieving the State of its liability for principal and interest in respect of an equivalent amount of any public debts of the State which may have been taken over by the Commonwealth.

Vice-President of the Executive Council

Senator O'CONNOR

. - It will be in the recollection of honorable senators that, when this clause was under consideration, some question was raised first of all as to the expression " face value " in paragraph (b), and then as to the latter words of paragraph (c). Some suggestions were made as to paragraph (b), to which I would like to allude. The Senate will remember that this is the clause dealing with the mode of payment of compensation to a State. The clause provides that compensation shall be payable to a State in respect of any land acquired under the Bill, and an option is given to the Governor-General to pay the compensation in these three ways : -

By payment to the State of the amount of such compensation.

By allotting to the State debentures or stock of the Commonwealth of the face value of the amount of such compensation, and bearing interest at 3 per cent.

) By relieving the State of its liability for principal and interest in respect of an equivalent amount of any public debts of the State which may have been taken over by the Commonwealth.

It was suggested that paragraph (b) would not be fair to the State because the Commonwealth stock when issued might be below par, and if the State had handed over to it stock representing the face value of the compensation, the State might not be able to realize upon that stock without losing money, and that therefore, in order to put them in the same position as if cash compensation was paid, there ought to be some other provision made. The only suggestion made was that the word "market" should be substituted for the word " face " in paragraph (b). I heard no other suggestion made. There is a difficulty about the "market value." In the first place, honorable senators are aware that these dealings with stock in paying the large amount of compensation that will have to be paid will run into very big figures, and it will be very easy to affect the price of the Commonwealth stock,

and to run it up or run it down. When are we to fix the date on which the value is to be taken, and how are we to fix the market value? Stock issued under these circumstances might vary very considerably from week to week or from one day to another. It seems to me that it would be unsatisfactory to make the "market value" of stock payable in compensation, because it would lead to gambling in stock, running it up and running it down; and I do not think there is any corresponding advantage that could accrue to the State. Suppose we leave the paragraph as it is? If the "face" value of the compensation is given, leaving the question of the "market" value of stock out of consideration altogether, it means that you give the amount of compensation, but the payment is deferred until the due date of the stock, and interest is payable in the meantime at 3 per cent. That means that, instead of paying the cash value of the compensation at once, we undertake to pay it in three, four, or ten years, whatever it may be, and allow interest in the meantime at 3 per cent., and when the stock becomes payable the holder of it can go with the bond to the Commonwealth Treasury and get the full amount of it. When the holder is paid, therefore, he will have got the face value of the full amount of compensation, and will have had interest at 3 per cent. in the meantime.

Senator Playford

- In the meantime the States will be getting less interest than they ought to.

<page>3029</page>

Senator O'CONNOR

- Why?

Senator Playford

- By having to take 3 per cent.

Senator Clemons

- When they borrow at 4 per cent.

Senator O'CONNOR

- I am afraid we cannot set that right. If in a good many instances they have borrowed for the construction of their public works at a higher rate of interest than they can get from the Commonwealth, we cannot help it. I think it very likely that the provision referred to will not be very much used. It is much more likely that the next alternative will be the one to be adopted, with an amendment. I pass on now to the explanation of paragraph (<) -

By relieving the State of its liability for principal and interest in respect of an equivalent amount of any public debts of a State which may have been taken over by the Commonwealth.

As the paragraph stands it would enable the public debts only to be utilized in this way which have been actually taken over by the Commonwealth. As honorable senators are aware, under one of the sections of the Constitution the public debts of the States may be taken over; but when they are taken over it must be either the whole or a proportion according to population. Section 105 of the Constitution says -

The Parliament may take over from the States their public debts as existing at the establishment of the Commonwealth, or a proportion thereof, according to the respective numbers of their people as shown by the latest statistics of the Commonwealth, and may convert, renew, or consolidate such debts, or any part thereof; and the States shall indemnify the Commonwealth in respect of the debts taken over, and thereafter the interest payable in respect of the debts shall be deducted and retained from the portions of the surplus revenue of the Commonwealth payable to the several States.

So that in that case the Commonwealth assumes the liabilities of the States, while the States will indemnify the Commonwealth for the amount of interest. It appears to me that the limitation made in this paragraph (c) would really seriously interfere with the useful operation of the provision. I am very much indebted to Senator Milled, who pointed this out when we were last in committee on the Bill, and I propose to make an alteration in that paragraph by leaving out the latter words - "which may have been taken over by the Commonwealth," and substituting the word "debt" for the word "debts." The effect of that will be that where the Commonwealth has had vested in it a certain public property, for which the compensation would be, say, £50,000, instead of paying cash to the States, the Commonwealth will take over £50,000 worth of the debentures of the States, bearing 5 per cent. interest, and in such a case the Commonwealth will take over the whole liability, and stand in the place of the State with the creditor of the State, while the State will be entirely relieved of that liability. I venture to say that that provision is much more likely to be adopted than any other. It must be remembered that we will be dealing with a very large

amount of money in these transactions. According to the best estimate we can get made now, and it is only a very rough estimate indeed, the amount is something over £10,000,000 that will be payable in compensation for the property that is taken over and becomes vested in the Commonwealth in respect of the transferred services. Of course, it would be impossible to raise that amount without serious disturbance of the financial arrangements of the Commonwealth, and, in addition to that, the interest which would be payable upon the loan might put the Commonwealth in a serious position, in regard to the appropriation of its revenue under the Braddon clause. The probabilities are that the better way, and the way most likely to be adopted, will be to take over an equivalent amount of the debt of a State, and in that way simply make it a matter of bookkeeping. In regard to the second paragraph Senator Clemons has spoken about, I do not see my way clear to make any change. With regard to paragraph (c), when the time comes I will move the amendments which I have indicated.

Senator PULSFORD

- I had not the advantage of being present when this Bill was introduced, and possibly the question I propose now to ask may have been answered at the time. I would like to know from the Vice-President of the Executive Council whether the Governments of the various States have been approached, and their opinion obtained with regard to this matter of payment of compensation, because it is a matter that already, I believe, affects values considerably in excess of £10,000,000. '

<page>3030</page>

Senator O'Connor

- I may tell the honorable senator that I cannot say that they have. I do not know that the Governments have been approached.

Senator PULSFORD

- Then I understand that the various "Governments have not been approached, and I think I may understand further, that the Government is not in a position to give an expression of opinion from any of the State Governments, It therefore becomes necessary for us to be very careful in this matter. As the clause is worded, it is to be entirely at the option of the Governor-General as to which of the methods of payment mentioned here is to be adopted. I can quite see that it might be objectionable to erase "Governor-General "and insert "the States, " but there are objections on either side. I have been' thinking the matter over, and I would make this suggestion without at present undertaking to move an amendment : I suggest to the representative of the Government that at the end of this clause a proviso be inserted allowing the State to appeal to the Supreme Court if it feels that the method of payment proposed by the Commonwealth involves any injustice to it. We can all see it is an element of unfairness to leave it to the Commonwealth to decide the mode of payment.

Senator O'Connor

- On what consideration could the High Court act '!

Senator PULSFORD

- And also there is some element of unfairness in leaving it to the State to dictate what it should take. But certainly in a matter of this sort there should be some understanding between buyer and seller. Neither should have the power to dictate as to what the terms should be. There should be some power of mutual arrangement, or some power of reference. I cannot myself think of anything better than' a reference to the Supreme Court of the Commonwealth to decide the matter on a basis of what seems fair in the position of affairs generally as between the State and the Commonwealth. I throw this suggestion out as the only fair and reasonable method I can think of, of doing reasonable justice between the Commonwealth and the States.

Senator CLEMONS

- I am sorry to hear that Senator O'Connor is unable to alter paragraph (b). At the same time I recognise that the difficulty he has pointed out with regard to ascertaining the "market value," is one which cannot be well got over. It was not at my suggestion that it was proposed that "market value" should be inserted instead of "face value," because, when the matter was being discussed, I felt some considerable difficulty in agreeing to the insertion of any such words. Of course my main objection to the whole of clause 44 still remains. I recognise that it is granting to the Commonwealth an option of three ways as to payment. The first, of course, is the obvious one of payment in cash ; and the second is that referred to in paragraph (fi), payment in debentures of the Commonwealth at their face value, that is at par. Senator O'Connor has

correctly pointed out that if the States hold these debentures until they mature they will get the full par value for them - that is to say, that for every £100 of debentures the State may hold it will get £100 when the debentures have matured. That cannot be gainsaid. But the contention I also urged when we were last debating this clause still holds good. Senator O'Connor knows that many of these States have borrowed at 4 per cent.

Senator Sir William Zeal

- Not now.

Senator DRAKE

- Some of them have borrowed at 6 per cent., if we go far enough back.

Senator CLEMONS

- I think that Senator Sir William Zeal will agree with me that many of the States of the Commonwealth are now paying 4 per cent, on some debentures, and it will at least be admitted that they are paying more than 3 per cent. I will leave it to Senator Playford, who has been Treasurer in his own State, and an Agent-General, and knows enough of these things, to answer Senator Sir William Zeal. We all know that the States have borrowed at a higher rate of interest than 3 per cent., and I point out that this clause will compel the States to put themselves in this curious financial position - that they will be lenders at 3 per cent., and borrowers at 3 per cent, at least. That is obviously a position in which we here should hesitate to place any of the States, and yet under this clause, at the option of the Commonwealth, we shall be doing it. Senator O'Connor, I think, has suggested a loop-hole of escape if he will allow his suggestion to be carried a little further. The honorable and learned senator says that probably this provision in paragraph (4) will never be used, and if the honorable and learned senator will allow himself to carry the likelihood so far as to eliminate paragraph (fi) altogether I shall be satisfied. 1

<page>3031</page>

Senator Playford

- Or say 3 per cent, instead of 3 per cent.

Senator CLEMONS

- I do not want to quarrel about the rate. I would rather have paragraph (b) eliminated altogether, because then the Commonwealth would still have a fair option, the option of paying in cash, the ordinary method, or relieving a State of its liabilities for principal and interest in respect of an amount equivalent to what it has to pay the State. It seems to me that paragraph (c) really covers all that is required point out that Senator O'Connor has rightly urged that the Commonwealth might find that provision an extremely desirable and convenient one. If we allow the Commonwealth to take over liability in respect of debentures of the State, it will equally relieve the Commonwealth from the necessity of finding cash. I cannot understand why Senator O'Connor should insist upon paragraph (b) remaining in the clause unless he wants to put the Commonwealth in a position of superior advantage to that of the State whose land is acquired. Therefore, rather than adopt Senator Playford's suggestion in regard to 3 1/2 per cent., I would prefer to ask Senator O'Connor if he cannot see his way to leave out paragraph (b). Paragraph (c) will prevent the Commonwealth from being placed in any disadvantageous position.

Senator STANFORTH SMITH

- There is no doubt that this clause is one of exceeding great importance, and it will have to be considered very carefully. Senator Pulsford has mentioned that the matter might be referred to the Supreme Court, but I think that would be a dangerous precedent to adopt, because the Supreme Court would act merely upon the consideration of what was right, and would not have regard to the exigencies of the case. The Supreme Court might rule that the correct thing to do would be to pay cash for the whole amount. We know that it is absolutely impossible, or would be exceedingly inconvenient, for the Commonwealth to pay cash for all these transferred properties. The compensation payable to the State in regard to any land can, under the clause, be met in three ways - first, by paying cash ; secondly, by taking over public debts of the States to the value of the properties; and thirdly, by giving debentures' at the rate of 3 per cent. Paragraphs (a) and (c) are perfectly right and just, but I consider that paragraph (b) would inflict a hardship on the various States. I mentioned this matter privately to the leader of the Government in the Senate some days ago. It seems to me that if we take over transferred services and pay for them in 3 per cent. debentures, we shall undoubtedly do an injustice to the States whose works are taken over, because in the case of the earlier loans raised by the Australian States that have not yet matured, the

money was borrowed sometimes at as high a rate as 6 per cent.

Senator Sir William Zeal

- There are not many of such loans that have not matured.

Senator STANFORTH SMITH

- The average rate of interest paid by the various States, according to a rough calculation I have made, is between 3 1/2 and 4 per cent. It would be manifestly unfair if the Government took over works for which the States are paying interest on the money borrowed at 3 1/2 or 4 per cent., and only paid the States 3 per cent. on account of them. If this clause is allowed to go as it stands, the Commonwealth Government will be in the position of saying to the States, " We will give you 3 per cent. debentures," and while the Commonwealth Government is paying the 3 percent., the States will be paying to their creditors in London 3 1/4 or 3 1/2 or 4 per cent. for the money borrowed in respect of the services transferred. That would not be just to the various States. I certainly think that if paragraph (b) cannot be deleted from clause 44, we should adopt Senator Playford's suggestion that the rate of interest on the debentures be 3 1/2 per cent. Even at 3 1/2 per cent. we should not, in my opinion, be paying the rate of interest that the States are paying for the money they borrowed to institute the various services which have been transferred to the Commonwealth.

<page>3032</page>

Senator O'Connor

- The difficulty is this : The money borrowed was at 4, 5, or 6 per cent. ; but it was not borrowed specifically for any particular work taken over by the Commonwealth. It was simply borrowed by the State as part of its financial operations upon its credit generally ; and why, when the Commonwealth takes over any particular work, should the Commonwealth be bound to credit the State with a rate of interest equivalent to the rate paid by the State generally on its indebtedness ?

Senator STANFORTH SMITH. - I have not a great knowledge of parliamentary procedure, but I understand that when the Treasurer brings forward a proposal for a loan, he states the works upon which the money is to be spent ; and it could be ascertained from the records of the States how much money has been devoted to a particular purpose. There are, no doubt, difficulties as to the rate to be paid. If we take the case of the Western Australian railways, a sum of £9,000,000 has been borrowed on account of them, and it would be very difficult to strike a rate of interest that would be exactly equal to the rate paid on account of the various loans that were floated at different rates of interest for the construction of those lines. But this difficulty would be got over if we said that if the rates of interest averaged 3 1/2 per cent. on money borrowed we would give the State debentures, not at 3 but at 3 1/2 per cent. That would come as near to a just compromise as we could get. If paragraph (b) were struck out altogether, we should then have two ways in which the option of the Commonwealth could be exercised - one to pay cash, and the other to relieve the States of loans to the extent of the services taken over. Therefore, I do not think the Commonwealth would be in a bad position. If what I suggest cannot be done, however, I shall support the proposal that the rate of interest be 3 1/2 per cent.

Senator Sir FREDERICK SARGOOD

- This is undoubtedly one of the most important clauses in the Bill. Personally, I have a decided objection to both paragraphs (a) and (b), for the reason that they will place in the hands of the States practically the power of raising what is equal to a new loan. We know perfectly well that if the Commonwealth pays cash to a State the money will soon disappear, no matter what Ministry is in power.

Senator Clemons

- We cannot help that.

Senator Sir FREDERICK SARGOOD

- I think we can. Paragraph (ft) would have the same effect. It would place in the hands of the States a number of debentures which they could sell in the market whenever they liked. It seems to me that if we can keep the States practically in the same position as they are in now, that is all that is wanted ; and I believe that that can safely be done. At present each State has a number of what I may call dead assets, in the shape of post-offices, forts, harbor works, and so forth, out of which it cannot make money; and if the

Commonwealth were to take over an amount' of the debts of the States equivalent in value to the amount of those assets, it would relieve the States of a certain portion of their dead assets, and also relieve them

of a certain portion of existing debts, whilst at the same time the position of the States financially would not be altered one iota. It appears to me that that would be the best system to adopt, both for the Commonwealth itself and for the States. Because after all the Commonwealth is only a partnership of the six States. We are all, I think, apt to fancy that the six States having become a Commonwealth there is no community of interest between the States and the Commonwealth, and that when the Commonwealth takes over a public work the State is selling to the Commonwealth.

Senator Sir Josiah Symon

- Whereas the fact is the State is virtually selling to itself.

Senator O'Connor

- And the very interest on the debentures has to be paid according to the population of the States themselves.

Senator Sir FREDERICK SARGOOD

- The only difficulty I can see is that the amount of interest to be paid is to be subsequently divided. Take, for instance, forts. They are taken over for the benefit of the whole Commonwealth. But it does not follow that the interest should be divided in the same way as the amount of Customs revenue has to be divided. I imagine that the interest which would have to be debited ' to the various States, according to population

-

Senator Playford

- At the end of five years they will all be treated as one.

Senator Sir FREDERICK SARGOOD

- I am only dealing with the five years. If those existing debts were taken over under paragraph (c), and the interest divided according to the population of the States, I think not only would the equities of the case be met, but it would be a sound business transaction, and would not place the States in any better or any worse position than they are in now.

Senator Drake

- Surely the interest would be according to the amount taken over from each State, and not according to the population?

<page>3033</page>

Senator Sir FREDERICK SARGOOD

-No,because the Commonwealth might take over from one State more than from another, but the taking would be for the benefit of the Commonwealth as a. whole. It would not be fair to debit the State with the whole of the interest. That should be divided proportionately among the States, as would be the case in an ordinary partnership.

Senator O'Connor

- It would have to be so. Under the Constitution the charge is one upon the Commonwealth pro raid.

Senator Sir FREDERICK SARGOOD

- That is so. It is provided by the Constitution Act. I think the wiser plan is to content ourselves with paragraph (c) alone. That will simplify matters considerably, It will remove the 'question of buyer or seller having to say in what currency work should be paid for.

Senator O'Connor

- The honorable senator would not take away the option of paying in cash 1

Senator Sir FREDERICK SARGOOD

- I would, because there would be a distinct danger in it.

Senator O'Connor

- There may be a small amount of £200 or £300 to be paid, and that might be more conveniently paid in cash. We must trust the Commonwealth Treasurer.

Senator Sir FREDERICK SARGOOD

- When the Commonwealth is taking over large public works, amounting in value in some cases to £10,000,000, it would be a great mistake to pay the money to the State in cash or in debentures, which the State can sell upon the market. Therefore, you are shut up to the only sound business transaction, namely, to relieve the State of debts to the value of the work taken over.

Senator PLAYFORD

- I agree in the main with Senator Sir Frederick Sargood. I may point out that from an interjection made by

the leader of the Government, I conclude that he is under the impression that we cannot ear-mark the various loans which have been raised by the States. But we can. In South Australia we can tell exactly the amount of money we have borrowed, and for what purposes it was borrowed : and if the Commonwealth takes over a particular work we can tell the amount of money borrowed on account of that work.

Senator O'Connor

- If that be the case in South Australia it is not so in Victoria.

Senator PLAYFORD

- That is a sad omission on the part of Victoria. In South Australia we are able to tell what we have borrowed for - for railways, or waterworks, or for construction of buildings, or the erection of post-offices, or any other purpose. We can fix the line in the Loan Bill,' and show the particular amount there, and also the statement made by the South Australian Government to investors in 'London when we borrowed the money there. We said that we wanted so much for each particular, work.

Senator Sir Josiah Symon

- We can also show the large amount we have spent upon unproductive works !

<page>3034</page>

Senator PLAYFORD

- Well, in South Australia we have not spent much money on unproductive works. The Commonwealth is going to take over certain works. It has, for instance, taken over our telegraph lines in the Northern Territory. We can tell to a penny what we have borrowed for that work. The Commonwealth will take over our forts and various other works. The question is, how is the Commonwealth to pay for them ? The States have to be paid for them. I agree with Senator Sir Frederick Sargood that the very worst thing the Commonwealth can do is to pay for them in cash. The danger will be that in some States - I do not say in all - the money will be appropriated quickly for other public works. We know how careless Parliaments are when they have plenty of money to dispose of. When the revenue is exceedingly nourishing all sorts of demands are made upon the Treasurer. The expenditure is piled up until it is found that the Government has overrun the constable, and the expenditure has to be checked. The danger of paying over to the States large sums of ready cash -that can be at once disposed of is very great, and I would save the States from that danger for their own benefit. Because I know, as an old Treasurer, the extreme danger that there is when Parliament has the means of getting at ready money. The next question is, how are the States to be paid if not in cash ? The proposal of the Government is that they should be paid in debentures bearing interest at 3 per cent. In the first place, that is not fair to the States. They cannot borrow money at 3 per cent, at the present time. They will have to pay at least 3½ per cent, for their own loans. If the Commonwealth is to pay them in debentures at a fair rate I think it will be found that almost the whole of the stocks on the London market in recent years run for something like 30 years ; so that it will be seen what an unfair thing it would be to a State if they had to keep those debentures bearing interest at 3 per cent, whilst they were paying 3½ per cent, on their own loans. I do not think we want to do anything of that sort. There is another danger which has been pointed out by Senator Sir Frederick Sargood - that when the States get these debentures they can turn them into cash, and that would be just as bad as if the Commonwealth paid them cash originally. Senator O'Connor has said that we must trust the Commonwealth Treasurer in these things. Well, if I knew who the Commonwealth Treasurer was to be, I might answer that remark favorably. But I do not know who he is to be in years to come. Therefore I would take out of the hands of the Commonwealth Treasurer the power to do any injustice to the States, It is only fair that we should lay down the principle that the Commonwealth shall pay a fair price, and pay it in a way that is just and fair to the States. If the Commonwealth is to pay the States in debentures running for 30 years, and pay them at % per cent, less than the rate at which the States can borrow, that means that the States will, be compelled to lose h per cent, on millions of money for 30 years. That is not fair to the States, and I am sure that the States' Treasurers will object to it. Therefore I suggest one of two modes - either to make the interest 3½ per cent., or to excise the provision to which I object. Which is the best thing ? I would strike out the provision relating ' to the payment in cash and leave in the fair provision that the Commonwealth may take over from the States an equivalent amount of their bonded debt to recoup them for the works that they have handed over to the Commonwealth. That appears to be the right thing to do, and that was the way in which the matter was discussed at the Convention. It was

always considered that the Commonwealth would take over an equivalent amount of the indebtedness of the States when it took over any of these various public works, such as telegraphs and the forts, and various other buildings that have already been handed over. , It was thought that the Commonwealth would take them over at a proper valuation, and relieve the States of an equivalent amount of their indebtedness. A great deal of the State bonds will have only a few years to run, and then the Commonwealth' will be able to go into the market and borrow at rates unmistakably cheaper than any of the individual States could do. Whatever other effect the Commonwealth may have in relation to the States, I think, judging from my knowledge of the London market, and from what has happened in Canada, that it is sure to have the effect of depreciating the value of the bonds of the smaller States, while the value of the Commonwealth stock will be appreciated. The Canadian Government have been borrowing for 3 per cent, for many years, and at rates much lower than we have been able to borrow at. If we come to look at the bonds of any particular province, however, we find that they :11 ways bear one-half per cent, or even a higher rate of interest than Dominion loans. The same effect is going to be introduced here. We do not want to injure the States. We want to pay them a fair price ; and, as it was generally understood when the question of federation was being discussed that the Commonwealth would take over the public works of the States, and relieve the States of an equivalent amount of their indebtedness, I think that we might strike out the first two paragraphs and leave the third. Then we will unmistakably provide that, in taking over these public works, the Commonwealth shall take over an equivalent amount of indebtedness. As to the likelihood of extravagance being the result of handing over large sums in cash to the States, I would point out that if the States 1 were paid by debentures they would still be able to get cash for them, because they would always be able to sell the Commonwealth debentures in the market. It is a great deal better for us to provide that the Commonwealth shall -take over an equivalent part of the debt.

<page>3035</page>

Senator Lt Col NEILD

- I think every honorable senator must have been exceedingly charmed to learn of the splendid manner in which the finances of the Utopian province of South- Australia have been conducted. But while Senator Playford was kind enough to tell us that he could give an exact account of every penny that had been borrowed in respect of the public works in South Australia, he was equally careful not to tell us how the borrowed money had been expended. It is very well known that loans for public works are borrowed upon estimates, which are never exactly adhered to. Consequently, while certain sums figure in the Loan Acts, the actual expenditure is not in accordance with those amounts.

Senator Playford

- But in South Australia we make special provision for that by Act of Parliament.

Senator Lt Col NEILD

-Col. NEILD.- What becomes of the money borrowed in excess of the expenditure. Is it returned ? Is an amending Act passed to reduce the liability? But, after all, these questions are quite apart from the matter at issue. I do not know that other States have been so happily situated in regard to their Treasurers as South Australia has been in having our experienced and very worthy senator holding that office for many years. While I am strongly in favour of the view put by Senator Sir Frederick Sargood and Senator Playford in respect to paragraph (c), we must look at some of the difficulties, if not all of them. If we limit the taking over of debts in the manner specified, if we are to do business in that particular way, we shall be asking the Commonwealth not only to take over the debts at their face value but to take over the interest at its face value. The expenditure in regard to interest is a very varying quantity in each of the States. There have been moneys borrowed in respect to public works within the limits of this Commonwealth at rates as high as 5 per cent.

Senator Clemons

- Senator Sir William Zeal would not allow me to say 4 per cent.

Senator Sir William Zeal

- I say that there are very few loans now carrying more than 4 per cent. Formerly they were borrowed at rates running as high as 6 per cent.

Senator Lt Col NEILD

.- That is so ; the early borrowings were up to 6 per cent. They have been at 5 and 5 1/2 per cent., and

they have run down the gamut until in some cases we find them as low as 3 per cent. It would, therefore, be a somewhat difficult task to allocate the public debts of the State in regard to public works. The amount of indebtedness could be fixed, but the paramount difficulty would be to deal with the rate of interest. I can only conceive of getting over that difficulty by determining some reasonable rate of interest. Some inquiry would be necessary, no doubt, in order to arrive at a decision. It could hardly be done in a rough and ready way by this committee. It would probably require the appointment of a committee of three to report to the Senate as to what is a fair rate of interest for the Commonwealth to pay. I own that that would not be a satisfactory way of dealing with the matter, but it would be the nearest approach to equity that occurs to my mind at the present moment. I quite agree with Senator Sir Frederick Sargood and Senator Playford as to the undesirability of the Commonwealth placing huge sums of money at the disposal of the different State Treasurers of the Governments or even Parliaments. Reasonable exception might be taken to trusting even the people themselves, when excited at a general election, in regard to such a matter. Such a question might very readily involve the fate of a general election. This is not a question which ought to become the subject of heated debate or popular clamour. Dealing with the financial exigencies of the Commonwealth or of the States should be a matter for care, caution, and business acumen ? No doubt there would be a risk in placing such gigantic sums of money at the disposal of the State Treasurers.

Senator Clemons

- But the Commonwealth would never have the cash.

<page>3036</page>

Senator Lt Col NEILD

.- The proposal contained in paragraph (b) to make payment by debentures seems to me to be a singularly clumsy method of public finance. It is uncommonly like paying your creditors with an I O U. It is not a desirable position for the Commonwealth Government to occupy - a Government supposed to be of much dignity - to be offering promissory notes in payment for property taken over. The Commonwealth should be in the position to pay cash, or take over the responsibility - and the latter by way of preference - if we can get over the rate of interest difficulty. . I think it would be very much better to adopt the proposal made last week in reference to paragraph (b), if we are to retain it, and that instead of allotting to the State debentures or stock of the Commonwealth at face value of the amount of such compensation, we should take the market value at the date of allotment. That would not be a very difficult thing to arrive at, and it would certainly be fairer than compelling the State to take the stock at its face value at a time when it might be at a heavy discount. Circumstances might compel the transfer of property at any time. We cannot tell what is before us. We must transact this business within a reasonable time, but we do not know what national complications may arise to cause the stock of any country, not alone the stock of a new Government such as this, to depreciate very materially. I am sure honorable senators can remember an occasion when what was one of the principal Australian colonies at the time proposed a loan of £1,000,000. or £2,000,000, bearing interest at 5 per cent., and the selling price to be £85. That is an actual historical fact.

An Honorable Senator. - That occurred many years ago.

Senator Lt Col NEILD

.- I admit that it occurred perhaps 30 years ago. Still, what would be likely to be the value of Commonwealth stock or debentures at a time of great international complication ?

Senator Walker

- The Queensland Government borrowed at 10 per cent, in 1866.

Senator Lt Col NEILD

- That is a rather more shocking example than the one I have referred to. We are proposing to make a bargain in which the buyer is to fix the terms, if not 'the price,' and that is hardly a fair proposition. If the buyer is to be the sole judge of the terms he will certainly take advantage of his position, notwithstanding the interjection made by Senator O'Connor that we should trust the Commonwealth Treasurer. The Treasurer will not be doing his duty if he does not take advantage of the market and obtain the best bargain, for his Government.

Senator Sir FREDERICK SARGOOD

- But in this case the buyer is only the senior partner in the firm.

Senator Lt Col NEILD

- But the senior partner often takes it out of the junior partner. In reference to the objection raised by Senator Sir Frederick Sargood, I may say at once that, if his idea is perfectly sound, and does not bear any elaboration, we need not be here as honorable senators representing the different States. We can trust the Commonwealth Government, and our functions as representatives of different States, sent here for the purpose of protecting State interests, really go by the board. We are not wanted ; we are cum.berers of the ground. While I am prepared to trust the bona fides of the Treasurer, it does not follow that he is going to make bargains in the interests of the States rather than in the interests of the Commonwealth. If the Commonwealth debentures are at a heavy discount, as they certainly must be at some time or other, I hardly think that the States will get the best of a bargain in which they have no say, and in which they have merely to accept that which is tendered to them. I see a difficulty in dealing with this clause. I was prepared to move an amendment, but that amendment would be unnecessary and stupid if we knocked out any one of these paragraphs.

Senator Drake

- We have already had an amendment moved on the second One.

Senator Lt Col NEILD

.- As I understand, it is only indicated and' not moved. If there was any method of getting over this difficulty I would desire to omit the words " Governor-General," in line 3, with a view of altering the phraseology of the clause so as to make it read this way -

The compensation payable to a State in respect of any land acquired under this Act may be paid is may be agreed upon between the Government of the Commonwealth and the Government of the State concerned in any one or more of the following modes.

Senator O'Connor

- Supposing they do not agree.

<page>3037</page>

Senator Lt Col NEILD

.- Surely " the difficulty of agreeing is not a justification for commandeering. The clause as it stands now practically gives the Commonwealth power to commandeer the property and to fix its own price. That is a one-sided proposition, which does not commend itself to business men or to any equitable men. Surely the State has some rights. Granted that they are partners in the concern, still they have rights. To say that the senior partner - adopting the term used by Senator Sir Frederick Sargood - is to be the sole judge of everything, does not appeal to my mind as either equitable or proper. At the proper time I think I shall test this question by moving an amendment. I see, however, that if I move the amendment I have indicated, and either of the paragraphs is subsequently omitted, the amendment itself will have to be altered, and the only way out of the difficulty would be to recommit the clause. That is a cumbrous procedure. With the view, however, of testing the question, I move -

That the words " at the option of the GovernorGeneral," lines 2 and 3, be omitted.

The words "as may be agreed between the Governments concerned," which I propose to substitute, would come in after the word " paid " in line 3, .

Senator Sir WILLIAM ZEAL

- There have been various suggestions made, but they will not help the Government of the Commonwealth in any way in solving the difficulty which has been presented. There is no doubt whatever that the rate of 3 per cent, provided for in the Bill is below what is fair and just, and we should not ask a State to take Government debentures bearing only 3 per cent, interest. I point out to Senator O'Connor that there is a way of arriving at a rate . of "interest which it seems to me would be perfectly fair to the States. It is that the average rate of interest borne by the loans of any particular State should be the rate of interest which the debentures of the Commonwealth taken by the State should bear. A great deal has been said as to the value of these low and high price debentures, but honorable senators who have had to do with these business transactions must know that Governments floating loans at a low rate of interest, notably 3 per cent., have to approach the London money market with a bait to the financiers before they will accept those loans. They have to offer to the London financier a 3 per cent, loan at a minimum price, for instance, of £96. We know that in such Cases where a State loan is concerned, the State Government loses £4 for every £100 it is borrowing, and therefore, even under the proposal of the

Bill, the States would not be losing so much as the Commonwealth would be losing, because while the Commonwealth Government would be paying 3 per cent, on the amount of the debentures, the State would get £100 for a debenture for which the Commonwealth would have obtained only £96, and the debenture to the State would be worth 4 per cent, more in the market than the Commonwealth Government received for it.

Senator Playford

- We pay £3 on every £100, and only get £96 for it.

Senator Clemons

- £4 of the capital is surrendered to secure a low rate of interest. That is what it means.

Senator Sir WILLIAM ZEAL

- The man borrowing £100 debentures and paying only £96 for them is making a very good bargain.

Take, for instance, the case of the loans issued in connexion with the Melbourne and Metropolitan Board of Works. It is proposed now that they should be issued at 3¹/₂ per cent., but they pay a buyer something like, £3 1 2s. per cent.

We cannot have the advantage both ways. If the Treasurer of the Commonwealth borrows at £96, and sells at £100, the State will gain £4 by it. Where then is the loss to the State that honorable senators have talked about in such a case ? I hope Senator O'Connor will take the suggestion I make into consideration. Supposing the loans of South Australia bear an average interest of £3 10s. 8d., of New South Wales £3 12s. 6d., of Victoria- £3 lis. 4d., the average of these loans might be taken in the way I propose as fixing the rate of interest to be payable to the State, and that would meet the difficulty suggested by Senator Pulsford. The honorable senator's proposal is not a practical one. It does not seem to me to be a practical course to approach the Supreme Court and ask it to determine questions of commercial value. If we could take the average rate of interest that is being paid on the loans in the various States, and allow our debentures to carry that interest, the States would lose nothing, because they would be obtaining from these loans the exact equivalent of what they would themselves be paying. I do not see the objection to the clause which honorable senators speak about. Honorable senators have said that the local Governments might go into the market and deal with these huge sums of money in a certain way, but there is such a thing as public opinion in the country, and that would deal with any Treasurer who would deliberately squander hundreds of thousands of pounds. It would not be possible for that kind of thing to be done, at all events, in the State of Victoria, because the Government of Victoria are looked after with the greatest vigilance.

Senator McGregor

- It is only very recently, then.

Senator Sir WILLIAM ZEAL

- I would like the honorable senator, who is very facetious at times, to tell me when in this State, it was not so. It is all very well to make general statements and, as we say, to swear at large, but perhaps the honorable senator will say when it was not so in Victoria ?

Senator McGregor

- When people were paying £50 an acre for land that was not worth 2d.

<page>3038</page>

Senator Sir WILLIAM ZEAL

- I do not know that they ever paid £50 an acre for such land, and having lived in this State of Victoria since 1852, I should know something of it if it took place- Perhaps the honorable senator will say where this extraordinary procedure took place, and no doubt the information he will give to the public will prove to be a great check upon such public speculation.

Senator McGregor

- It is done now ; it is too late to alter it.

Senator Sir WILLIAM ZEAL

- It is not done, and I challenge the honorable senator to say where it is.

Senator Harney

- What is the point ?

Senator Sir WILLIAM ZEAL

- The point is that the honorable and learned senator should listen to what is being said. The honorable

and learned senator wants to be a sort of Admirable Crichton, an authority upon the law, the gospel, and every other subject. The honorable and learned senator may be an excellent lawyer - I have my doubts about that - but at all events I do not think he is an authority upon anything else. I would ask Senator O'Connor to consider the advisability of proposing that the average rate of interest should be the rate fixed. There is no doubt that the question raised by Senator Pulsford is a very important one ; but the honorable senator proposes a cumbersome way of dealing with it. If we fix the rate of interest at the average rate payable on the loans now borrowed by the States it will supply a basis of agreement between the States and the Commonwealth which, I think, would insure that fair play would be done between the Commonwealth and all the States.

Senator O'CONNOR

- There is one amendment at present before the committee. I would like to point out that all these discussions with regard to the interest, and the discussions which have arisen in connexion with paragraph (i), really refer to a different matter from that of whether the State or the Commonwealth Government is to have the option of deciding the method of payment. I suggest that honorable senators should confine themselves in the first place to the amendment at present before the committee ; and after that is settled I shall be quite willing to answer Senator Sir William Zeal upon the points he has raised. With regard to Senator Neild's amendment, there is one fatal objection to it, and that is that it would simply lead to a dead-lock. .

Senator Staniforth Smith

- There would be no finality.

Senator O'CONNOR

- That is so. The honorable senator says that the three options stated in the clause should be exercised as agreed upon by the parties, but supposing the parties do not agree, what are we to do then ? It is quite clear that we must have some finality in processes of this sort. Senator Neild's proposal shows that although he is not willing to leave the option to the Governor-General neither is he willing to leave it to the State. It is impossible to leave it as the honorable senator suggests, because we would never be able to arrive at a settlement. The reason for retaining the option with the Governor-General is this : as I have pointed out before, these transactions regarding the value of the transferred property will involve a very large amount of money, "certainly over £10,000,000. The estimate has been something between £10,000,000 and £11,000,000. That involves also a very large amount of interest, something like £300,000 per year, at least. That money being Commonwealth expenditure, whether it is principal or interest, has to be distributed, per capita, amongst the States, according to population. Take for instance the case of the State of Victoria. It is paid say £3,000,000 for a certain public work, and it gets the compensation in cash, debentures, or any other way. That £3,000,000 has got to be paid by Victoria, New South Wales, Tasmania, and all the other States in proportion, and the interest has to be distributed also. There are very large financial transactions involved between the States and the Commonwealth, which must be settled at once in regard to these transferred services. The reason why the option must be with the Commonwealth and not with the State is that otherwise we put it into the power of a State to demand cash compensation. Take, for instance, the State of New South Wales requiring to be paid £3,000,000, £4,000,000 or £5,000,000 in compensation, whatever the sum may be. If the Commonwealth was bound to pay that in cash, it would mean that the Commonwealth would be driven into the money market and obliged to raise this money, and to raise a great deal of it perhaps at the same time. It might be driven into the market at an unfavorable time and be obliged to buy the money at more than it is worth, because there is such a thing.

<page>3039</page>

Senator Sir Frederick Sargood

- That is all in favour of my proposal.

Senator O'CONNOR

- I am coming to that in a moment. What I am pointing

Out is this- and I think the argument is unanswerable - especially in the early days of the Commonwealth, and all its financial difficulties will arise at once and have to be dealt with - that it would be impossible and most unwise to put the Commonwealth in the position of being suddenly obliged to find immense sums of money which would mean a very large amount of interest and perhaps loss, which would fall upon the

States as well as upon the Commonwealth itself. I think it will be admitted generally that we must leave this option in the Commonwealth. I have answered both branches of the amendment proposed by Senator Neild, and I submit that it ought not to be carried. Whatever we may do with regard to the three methods to be adopted for the payment of compensation, we must leave the Commonwealth to determine in what way the payment shall be made.

Senator Sir JOSIAH SYMON

- Senator O'Connor has anticipated some of the observations I intended to make, but there is one point with regard to the amendment to which I- would like to direct attention. I understand that it is not desired that there should be a discussion upon the different paragraphs.

Senator O'Connor

- Not at present, I suggest.

Senator Sir JOSIAH SYMON

- So far as the amendment proposed by Senator Neild is concerned, it is open to the criticisms which have been directed against it by Senator O'Connor, but in addition to those I think the honorable senator will see that there is nothing very extravagant or unusual, especially in relation to States such as the Australian States and the Commonwealth, in a provision of this kind, because the option that is left to the Governor-General is not to determine any form of contract or any special conditions seriously affecting a bargain between the States and the Commonwealth. It is merely to determine the mode of payment, and that mode of payment, whichever form is adopted, is either cash or an equivalent for cash. There is no danger, it seems to me, of injury being done to the States by leaving the option of determining the method in which payment should be made in regard to lands taken over, to the Governor-General of the Commonwealth, which means of course the

Governor-General in Council. There maybe some questions arising upon the paragraphs of the clause to which I. may direct attention by-and-by as to the rate of interest and so on. I hold very much the view put forward by Senator Sir Frederick Sargood and Senator Playford with regard to the operation of paragraphs (a) and (c), concurring also as to the desirability of eliminating paragraph (6). I do not go so far as to say that paragraph (a) ought to be eliminated, but as to the option of determining which of the methods of payment should be adopted, we will encounter all sorts of difficulties and inconveniences unless we have one party determining that matter. I suggest that perhaps Senator Neild will see the desirability of withdrawing his amendment.

Senator Sir FREDERICKSARGOOD (Victoria). - There can be no doubt at all that if an option is given to say whether the method adopted should be provided for in paragraph (a), (b) and (c) ; there must be some one in a position of power to decide the option, and the option can only be, so far as I can see, in the hands of the Governor-General. I understand the amendment of Senator Neild to be to strike out the words " at the option of the Governor-General." I intend to support that as being a necessary amendment, if paragraphs (a) and (6) are struck out as I want them to be.

Senator Clemons

- They will not H)e wanted if the paragraphs are not in.

Senator O'Connor

- I hope the honorable senator, Sir Frederick Sargood, will not adopt that course ; it might result in leaving these words out, and after all the honorable senator might not be able to carry the other amendment he proposes.

Senator Sir FREDERICK SARGOOD

- My object is to strike out paragraphs (a) and (6) with a view not of making it optional at all, but of making it compulsory that if assets are taken over from the State, the State should be relieved of debts to the same amount. It is perfectly simple, and as Sir William Zeal has pointed out, the question of interest is really not one of practical difficulty.

<page>3040</page>

Senator O'Connor

- Might I interrupt the honorable senator to say that if his amendment is carried then the words " at the option of the Governor-General " will only be surplusage, and they may be struck out later as a mere matter of form.

Senator Sir FREDERICK SARGOOD

- Does not the honorable and learned senator think that we might still practically take the discussion upon this amendment.

Senator O'Connor

- No, because there is & union of forces to strike out those words that have quite a different intention as to what we are to do afterwards

Senator Sir FREDERICK SARGOOD

- I do not wish to interfere with the honorable and learned senator in charge of the Bill. The point is as to whether there is to be an option or not. If my view is carried out there will be no option and no necessity for leaving those words in. It will be absolutely mandatory that if assets are taken from the States at the same time debts to the same amount will have to be taken over. It appears to me that we could save time by taking the sense of the committee upon this amendment.

Senator Sir JOSIAHSYMON (South Australia). - I would like to point out to Senator Sir Frederick Sargood, that before his adroit suggestion is adopted it would be just as well to understand its effect with regard to the paragraphs of the clause. Some honorable senators agree that paragraph (6) should not be retained, but they are not agreed to eliminate paragraph (a). Therefore we should be in this- position - that there would be an amount of cross voting, which would result in no real outcome, so far as facilitating the decision of the committee upon the clause. I think we should deal with the paragraphs of the clause, and then afterwards, if («) and (b) were both struck out, we should go back and strike out what would make nonsense of the clause. Of course, this is a question which very intimately concerns the interests of the States. There is no doubt whatever that we are here as the representatives of the States, to see that those who sent us here get full value for the assets transferred to the Commonwealth. I thoroughly agree with Senator Playford that the underlying principle, in regard to the compensation to be paid in respect of the properties taken over, should be the transference of the liability from the particular State of an equivalent amount of State debts to the Commonwealth.

Senator Sir Frederick Sargood

- At face value t

Senator Sir JOSIAH SYMON

- I do not say at face value. I do not want to discuss the details, because paragraph (c) seems to demand some slight alteration. I thoroughly agree that that is the principle ; and I should think it would be quite sufficient to leave in paragraph (c), because then, upon these particular assets being taken over, there would be a transfer of so much of the debts of the States to the Commonwealth as would be a payment to the States for the assets taken over, in accordance with the value agreed upon. But paragraph (c) leaves the matter somewhat indeterminate; because, while providing that the payment may be made by relieving the State of the amount of principal and interest of the debt of the State, it does not say what debt the Commonwealth shall take over. "We know that in every State the debts are of varying terms, and at varying rates of interest. The public debts of the States depend as much perhaps for their value on the time they have to run as upon the security and the rate of interest.

Senator Sir William Zeal

- Then, why should British consols be worth about 91-J- *?

Senator Sir JOSIAH SYMON

- I do not want to discuss that, because British consols are not mentioned in the clause; though I agree with Senator Sir "William Zeal's view to a large extent. The debt varies in each of the States in respect to duration and rate of interest. What has been described with regard to the Utopian State of South Australia - that we can lay our finger on that particular amount of debt appropriated to assets taken over - cannot be the same in respect of other States. Our bookkeeping method may remove any difficulty such as I have indicated in regard to the allocation of an equivalent portion of the debt of the State whose property is to be taken over, and the settlement of what is due to the State. But short of that it would seem to be necessary to have some provision in paragraph (c) or in another paragraph to provide that the particular public debt from which such an equivalent shall be taken over shall be determined- in case of difference of opinion by, I suggest, the Governor-General in Council, and by the Governor in Council of the State affected.

Senator O'Connor

- What is the question they would have to decide?

<page>3041</page>

Senator Sir JOSIAH SYMON

- They would have to decide what portion of any public debt shall be taken over. Suppose the State has a 3 per cent., a 3¹/₂ per cent., and a 4 per cent, loan falling due. There must be some one to determine as between the State- and the Commonwealth from which of those debts the equivalent amount to be taken over by the Commonwealth should be taken. If you leave it to the State the State will say - "The Commonwealth shall take over an amount of our debt that bears the largest rate of interest, or of a debt that matures first." There must be somebody to determine the question. I therefore suggest that there should be an amendment to meet that case. For my part, I do not agree with the suggestion that any question arising under this clause should be referred to the High Court. I am as anxious as any one that, whatever judicial duties are cast upon the High Court, they shall not be minimized in any way; but I think it would be imposing upon the court functions that it is not able to discharge, and would be lowering the dignity of the High Court, to make it a kind of valuator in regard to the value of particular debts to be taken over in satisfaction of a claim. Therefore, I hope that suggestion will not be pressed. Consequently, so far as paragraph (c) is concerned, that embodies the principle which ought to be acted upon in adjusting claims. At the same time I agree with the Government that the hands of the Commonwealth ought not to be tied, so as to prevent them paying in cash if the necessity for it arose, or it was expedient to do so. That is a pure matter of administration. It could never be a large sum, because the Commonwealth could not pay in cash to a very great amount. How would they be able to get the money 1 They could not pay it out of the Customs. They do not keep a large sum in the cash box ; and the provision could only be applicable to small claims, or to balances in respect of works taken over, which balances could not be easily adjusted otherwise. Therefore, I think we should, as a matter of expediency, leave in paragraph (c). I think paragraph (b) should be struck out. The difficulties which have been pointed out are innumerable. To begin there is the difficulty of the interest at 3 percent. It might be very unjust and unfair to compel a State to take debentures at 3 per cent., when the actual cost of the work might have been borne from money borrowed at 4 per cent. We know that some of the public works of the States have been undertaken out of money borrowed many 3years ago at a higher rate of interest than money is obtained for in the market to-day. Therefore I shall vote for retaining paragraph (c), and for eliminating paragraph (b) ; but I suggest that there should be an amendment in paragraph (c), so that there may be somebody to determine what debt of a State shall be taken over, if a difficulty arises. I suggest that it is a fair thing that the Governor in Council of a State, and the Governor-General in Council of the Commonwealth should sit to settle that question.

Senator Sir William Zeal

- Suppose they differ?

Senator Sir JOSIAH SYMON

- I do not think there would be any difficulty about that.

Senator Lt.-Col.NEILD (New South Wales). - One of the objects I had in view in moving the amendment has been achieved. I pointed out some of the difficulties that are in the way, and I recognise them still, but at the same time I think that the more convenient way to deal with the matter will be for me to withdraw my amendment so as to get to work upon the paragraphs of the clause. As I said some time ago, if the paragraphs are amended in such a way as to necessitate an amendment of the earlier words of the clause, that can be effected later on by way of. a recommitment of the Bill, or by a reconsideration, in whatever form is convenient to the committee. Therefore I ask leave to withdraw the amendment.

Amendment; by leave, withdrawn.

Senator CLEMONS(Tasmania). - I wish to move that paragraph (b) be struck out. But I find that I cannot move that amendment unless I obtain Senator O'Connor's consent to the committee afterwards going back to paragraph (a).

Senator O'Connor

- I am afraid I cannot give my consent to any irregularity.

Senator CLEMONS

- Does the honorable and learned senator insist that we should deal with paragraph (a) before paragraph (b) ?

Senator O'Connor

- We must do so.

Senator. Sir FREDERICKSARGOOD (Victoria). - It is absolutely against the standing orders to comply with Senator Clemons' request. I propose that the whole of paragraph (a) be struck out. I do not want to go over the whole ground again ; but I would point out that there is not much chance of the Commonwealth paying cash.

Senator McGregor

- Then where is the danger from the paragraph?

<page>3042</page>

Senator Sir FREDERICK SARGOOD

- There is a danger of the Commonwealth paying cash in some cases. We know that the debentures of the Commonwealth will yield a higher price than the debentures of any State. I should not be surprised to see them floated at more than par. It will pay the Commonwealth then to hand over cash instead of debentures," or instead of taking over the debts of the States. It is because I see that it is almost certain before long that it will be a good paying transaction for the Commonwealth, and also because it would be a very damaging transaction, so far as the States are concerned, to hand over to them so large an amount of money which would undoubtedly be unwisely spent, that I object to the provision. We have the experience of one of the most experienced Treasurers in the Commonwealth, Senator Playford, who has laid his views before the committee, and those who have paid attention to the course of public life during the last 30 years are well aware that where you have a large surplus of loan money or revenue in the hands of Parliament it very soon goes. I do not care how stiff-backed a Treasurer may be, or how anxious he may be to keep the money, Parliament will force his hands and compel him to spend it. In the interests of the State and of the Commonwealth such a condition of affairs must not be permitted, and therefore I say, without further argument, that paragraph (a) should be struck out. It has been said that some small amounts might be paid in cash. There is no difficulty about meeting small amounts under paragraph (c) ; or it is a very simple matter to pass the small amounts to the credit of the State until certain other transactions are added to it, and then take over debts.

Senator Harney

- Are not debentures practically cash ?

Senator Sir FREDERICK SARGOOD

- If the Commonwealth pay in its own debentures under paragraph (c) I agree with the honorable and learned senator that that would be paying practically cash. I am against retaining either paragraph (a) or paragraph (band in favour of the settlements being made entirely under paragraph (c). I move - That paragraph) be omitted.

Senator McGREGOR

- Of course it might be considered presumption on my part if I presume to differ from such an old Treasurer as Senator Playford, but taking all things into consideration

I am going to do it. I am also going to differ from Senator Sir Frederick Sargood. I will tell the committee why. I hope that in the future the Government of the Commonwealth will act in harmony with the Governments of the States in the direction of economy. Let me give an illustration. In South Australia--

Senator Lt Col Neild

- Where is that?

<page>3043</page>

Senator McGREGOR

- Well, New South Wales is a button on the coat . of South Australia. South Australia is the trunk to which all these gnarled knots - Queensland, Victoria, and Western Australia - stick. But that has nothing to do with the question. In the policy of the Government of South Australia, certain public works are projected. The same is the case in the policies of every Government in Australia. Seeing that most of the States' Governments have no excessive surplusage in connexion with their revenue, they will have to go into the market to borrow money to carry out these public works under the authority of Parliament. It has been argued that when a State goes into the market and tries to float a 3 per cent. loan, she only gets about £96. In some cases she does not get more than £92 10s. Even supposing a State gets £94 or £96, she has to place herself under that obligation to some institution in the old country or elsewhere. Consequently, the State loses £4 or £5 on every £100. It has been argued by the very senators who are

objecting to this paragraph that the Commonwealth can go into the market and borrow, and I think Senator Sir Frederick Sargood said a minute ago that probably the Commonwealth would be able to borrow money at a little over par. Suppose that Victoria wanted a quarter of a million of money to carry out authorized public works, and that the Commonwealth Government would be indebted to the extent of* a million and a half, or two millions and a half for property that they had taken over from the Government of Victoria. Which would be most in the interests of the Government of Victoria ? Would it be better that she should get the quarter of a million in cash ; that she should get £100 for £100 of work that she did, or that she should take only £94 or £96 per £100 for it 1 The whole thing is optional. It is in the hands of the Governor-General, and that means the Government. I hope all the transactions between the States and the

Government will be carried out in such a manner that they will be to the advantage of both. If any one is to borrow money, so far as these transactions are concerned, let it be the party which has the most likelihood of getting the best terms. It is for that reason that I am going, if I possibly can, to give the option to the Governor-General of paying the States either in cash, or anything else mentioned in this clause.

Senator CLEMONS(Tasmania).- I intend to oppose this amendment. I have already urged reasons why it ought not to be passed. I am still hopeful, in the interests of the States, that we shall get from Senator O'Connor the concession that I want, namely, that paragraph (6) be eliminated. In any case, whether we get it or not, I am prepared to concede paragraph (a) to the Commonwealth. It really seems as if we were putting the States against the Commonwealth in this matter. I quite conceive it to be desirable in many ways that the Commonwealth should have the power of paying for certain things in cash, and that payment would do injury to the State.

Senator O'Connor

- This clause will deal not only with matters of transfer, but with small matters which are continually cropping up.

Senator CLEMONS

- I agree that it is eminently desirable that the Commonwealth should have the power proposed to be given under paragraph (a). It seems to me strangely satirical that we should be attempting a sort of grandmotherly legislation for our States. I admit that, possibly, there is a certain amount of truth in it, but it is nevertheless a satirical thing to suggest that we cannot trust any one of the Governments of the States to hold any large amount of cash. That is Senator Sir Frederick Sargood's argument. It appears to me to be a "very poor one."

Senator Pulsford

- It is trying to make the States economical by Act of Parliament.

Senator CLEMONS

- There is another answer to Senator Sir Frederick Sargood's argument, and another reason why his amendment should be rejected. I cannot conceive it possible that the Commonwealth is ever going to have at its disposal a large sum of money in cash. I have heard no arguments which will convince me of that, or cause me to think that any danger may arise, even to the grandmother, if I may continue the analogy. It cannot be imagined that the States are going to receive large sums of money which will induce them to go in for extravagances, and I can see no reason why the Commonwealth should not have the advantage of paragraph (a). It will enable it advantageously to pay to the States certain amounts in cash, which payments will do no harm to the States that receive it.

Senator STANFORTH SMITH (Western Australia). - The more I think of this clause the more I see the necessity for eliminating paragraph (a). As -Sir Frederick Sargood points out, the Treasurer of the Commonwealth will probably adopt whatever means are best in the interests of his Government. If the Commonwealth can borrow money at a lower rate of interest than the States, it is evident that the Government might prefer to float a loan and pay cash, instead of taking over the debts of the States. That would be a bad precedent, because the debts of the State would not be paid when the services to which they related were transferred. What we desire is that the indebtedness of the States should be reduced in proportion to the value of the property transferred.

Senator McGregor

- Even if the States had to borrow money the next day at a loss of £6 on every £100 ?

Senator STANFORTH SMITH

- Yes. Senator McGregor presupposes that the money which is to be paid over by the Commonwealth to the States will be handed to them at the psychological moment when they want it for some particular public works.

Senator Stewart

- They always want money.

<page>3044</page>

Senator STANIFORTH SMITH

- That is so. The tendency of this provision would undoubtedly be to lead to lavish expenditure on the part of the States. I think that in the interests of the States we should object to the Government paying cash, because it seems to me absolutely irrefutable that the Treasurer of the Commonwealth will desire to float a loan at a lower rate of interest, and pay cash, instead of taking over an equivalent amount of loans from the States, which would in all probability bear a higher rate of interest. The Commonwealth Government would only be acting according to commercial principles in doing so. If we allow this paragraph to pass it will be giving the Commonwealth an unfair advantage over the States, and it will only benefit the latter in the unlikely combination of circumstances that, just at the moment when the States want to start public works, the Commonwealth Government will be in a position to give them a certain sum of money. .

Senator McGregor

- But the whole thing is to be done within a certain number of years.

Senator STANIFORTH SMITH

- Senator McGregor wishes to assume that the States will require to borrow money at the time that the Commonwealth wants to pay them. It is certainly in the interests of the States which we represent that paragraph (a) should be struck out. The Government will undoubtedly have the advantage over the States in borrowing money at 3 per cent., probably at par, and leaving the States with the loans which they borrowed at 3£ or 4 per cent, for the purpose of carrying out the works. I therefore think that honorable senators ought to consider this matter. It is only fair when the Commonwealth takes over certain departments that they should take over the debts incurred in creating those departments instead of substituting for them money which they have borrowed at a lower rate of interest.

Senator CHARLESTON

- I have listened carefully to the arguments on this question. I thought at first that Senator Sir Frederick Sargood's amendment would be a correct one to make, but, having considered the matter, I am satisfied that the balance of convenience, so far as the interests of the States and of the Commonwealth are concerned, will be gained by leaving paragraph (a) as it stands. Undoubtedly there will be a large number of small items which the Commonwealth Government will wish to settle up as quickly as possible with the various States. It was pointed out when we were discussing the Post and Telegraph Bill that there are various small sections of land which must be taken over, and no doubt the Commonwealth would like to dispose of the obligations in regard to such matters by paying in cash. I do not think there will be any very great danger of the Commonwealth deluding the States with large sums of money and forcing them to receive payment in cash. I am with Senator Sir Frederick Sargood to the extent that it would be extremely unwise to place at the disposal of the State, and perhaps force them to take payments of large sums when they would have no means of utilizing that money. Still I do not think that it is likely to occur often, if at all; and the balance of convenience will be found in leaving the clause as it is. It enables the Commonwealth Government to pay cash so as to settle up items which might otherwise be left on their books.

Senator STEWART

- The attitude taken up by certain senators in regard to this paragraph seems to me to be very amusing. They appear to desire that the Commonwealth Parliament should assume the role of the stern, unbending parent ; and they look upon the State Parliaments something in the light of the foolish little boy whose pocket-money is to be cut down to the very smallest amount. So far as I can see it is quite right that the Commonwealth Government should have the option of paying the State in the manner proposed in the clause. Senator Sir Frederick Sargood's principal objection to this method of payment appears to be that it would be extremely unwise to pour so much ready cash into the laps of the various States. I do not know whether he is justified in concluding that they would be more extravagant in their expenditure in these circumstances than they have hitherto been.

Senator McGregor

- New South Wales would probably have a million deficit.

Senator STEWART

- I do not know that we have anything particular to do with that. The States are governed by grown men, just as the Commonwealth is governed by grown men, and if they outrun the constable, that is their fault, and not ours. I think the Commonwealth should try to conduct its business in such a way as to be most advantageous not only to itself, but to the States. Senator McGregor pointed out very clearly how this clause might in operation act very advantageously to the States. Senator Sir Frederick Sargood admitted himself that the Commonwealth would be .-able to borrow at a lower rate than any of the States. When he made that admission he admitted the whole case.

Senator Sir Frederick Sargood

- Oh, no.

<page>3045</page>

Senator STEWART

- Why not? The States are always in a position of chronic impecuniosity. They are eternally knocking at the door of the London money lender. Public works are being continually constructed, and there has been no period during my acquaintance with Australia, at which a loan would not have been acceptable to any of the States. I do not think that period is likely to occur in the near future any more than it has done in the past; and would it not be to the advantage of the States, as Senator McGregor put it, for them to get £100 in cash for £100 worth of property, instead of getting only £89 per £100 for it? Senator McGregor put it at from £94 to £96. I know' these loans have been floated at as low a price as £88 per £100. Would it not be better for the States to get £100 for £100 worth of property than to be compelled probably to go to the London money market, and to get anything between £90 and £96 per £100, which, I believe, is the highest price that is ordinarily obtainable 1 It does not necessarily follow that because the Commonwealth has this vast power, it is going to exercise it, unless the circumstances are to be favorable both to the Commonwealth and to the particular State involved. We must trust the Commonwealth Government, and if they prove themselves unworthy of our trust, then we have our remedy. We can turn them out. If we bind the Government hand and foot, however, and limit them to one way of discharging their liabilities to the different States, then, instead of making the path straighter for the Commonwealth, we shall only run it into endless confusion. I shall, therefore, support the clause as it stands.

Senator HARNEY

-It has seemed to me from the beginning that there are no two views possible as to this paragraph, and that the view put forward by Senator Clemons is the correct one. This Bill is to be passed by virtue of sub-section (31) of section 51 of the Constitution Act, which enables the Parliament to make laws for - The acquisition of property on just terms from any State or person for any purpose, in respect of which the Parliament has power to make laws.

The first essential of this Act must be that if the Commonwealth Government acquire property they must acquire it on just terms. I should like to know what any tribunal would think of the justice of a measure which said that the ordinary recognised method of paying for property, which is as old as the exchange of property, namely, payment in cash, shall be excluded. The argument put forward to justify it really seems to be a slander upon some of the

Treasurers of the States. It is as much as to say, in the words of Shakespeare -

How oft the sight of means to do ill deeds

Makes ill deeds done. .

Give them the money, and they are bound to spend it ! I do not think we are justified in coming to any such conclusion. Moreover, honorable senators will see that the clause has reference to the acquisition not of large properties, not of such properties as the telegraph service, or of the services that are transferred to the Commonwealth.

Senator Staniforth Smith

- It might have reference to them.

Senator HARNEY

- No. Those are dealt with under section 85 of the Constitution Act, which says that the Parliament shall have power to take over property that is essential with the services that are transferred upon such terms

as the Parliament may see fit. This has to do with the ordinary acquisition of property, and the clause may include parcels so small that a couple of hundred pounds would be an appropriate payment. Does it not seem a childish thing to say that the State ought not to get the benefit of that £200 in cash if it cares to take it % Senator Smith has said it would be an advantage to the Commonwealth in these circumstances, since it could borrow money more cheaply than float a loan and pay in cash. Let them do so. It is to the advantage of us that they should. We get all we are entitled to if we receive in exchange for the property taken over its appropriate value in sovereigns. It is their look out if they can get these sovereigns more cheaply than we can, but to say that we are to take advantage of the fact of their superior borrowing power to compel them to pay us in a way that might advantage us and inconvenience them, seems to me to be contrary to all principles of the equity of exchange. It is not necessary to go any further than the words of the section of the Act under which we have power to acquire property "on just terms," and then it becomes ridiculous, on the face of it, to exclude one of the terms which by the usage of mankind is the most ordinary, the most appropriate, and the one to which resource is most often had by the public in all exchange. I shall, therefore, vote for the retention of the paragraph.

<page>3046</page>

Senator PEARCE

- I shall support Senator Sir Frederick

Sargood's amendment. I object to the term "grandmotherly legislation," as applied to his action. I would point out that the States have absolutely no voice in this bargain at all. The option lies with one party. The question as to whether the States shall have placed in their hands a sum of money for which they have no present use, is a question on which they have no choice, the choice being absolutely in the hands of the Commonwealth. What would be the position of a State Treasurer who found himself in possession of a sum of money? We know that in every State there are railways and public works of every kind in which people are interested, and the only defence the unfortunate State Treasurer has at present to meet demands for such works is to say that the money is not available or that it is not a judicious time at which to raise a loan on the London market. If this provision is carried, however, the Commonwealth Treasurer, for his own purpose and convenience, may decide to pay the State in cash, and then the safeguard of the State Treasurer is done away with. The State Treasurer will at once be the victim of an agitation for railways and public works in different parts of his State, and his argument that there is no money available will be taken from him. We have, in this matter, to look at the taxpayer in his dual position as a taxpayer of the State and as a taxpayer of the Commonwealth. His position is that, while the Commonwealth has got to raise money to pay the State in cash for land taken over, the taxpayer finds his burden increased because the State has had forced upon its hands a loan. The electors of the State have not been consulted as to the wisdom of raising a loan for public works, but the loan is placed in the hands of the State Treasurer by the Commonwealth Treasurer. I think that is a very possible position, because Senator McGregor has pointed out that it would be good finance on the part of the Commonwealth Treasurer to raise a loan at, say, 3 per cent., and pay cash for this land, rather than take over State debts-, on which he would have to pay 3\$ per cent.

Senator McGregor

- You are losing sight of the other part of the Bill.

Senator PEARCE

- The Commonwealth Treasurer would see that he was doing a good financial stroke in raising a loan and paying the State in cash ; but the position of the State Treasurer is that the' financing of the Commonwealth Treasurer will, have compelled him to increase the indebtedness of the State. The State is in the position that the land is taken from it, or public works are taken from it and replaced by cash, and that cash has then to be expended in other public works, because of the pressure of people who want those works, and thus the indebtedness of the local taxpayer in his dual capacity as a taxpayer of the State and the Commonwealth, is increased by the action of the Federal Treasurer. For those reasons I support the amendment moved by Senator Sir Frederick Sargood.

Senator MACFARLANE(Tasmania).I would like to say a word upon the clause. I come from one of the poorer States and I think that the Treasurer of that State would probably be very glad to have the compensation paid in cash. But he is 'open to pressure, and I am pledged, as I think other honorable senators are pledged, to encourage economy in the States. It is economy on their part to pay their debts,

and that is the first thing they should do. I therefore think it very much better that the State Treasurer in Tasmania should be paid by a reduction of his debts, rather than by cash.

Amendment negatived.

Senator PULSFORD(New South Wales). - The rejection of the amendment does not, I presume, mean that the paragraph is carried.

The CHAIRMAN

- Yes, paragraph («) is 'carried.

<page>3047</page>

Senator PULSFORD

- I wanted to move another amendment. The paragraph as it stands contains a contradiction to the clause itself, because the clause says that the payment may be made in any one or more of the following modes, which indicates an intention on the part of the Government to take the power to pay part in cash and part in debentures.

Senator CLEMONS(Tasmania).- We have heard all the arguments that can be adduced with regard to the undesirability of allowing paragraph (6) to remain in clause 44. A suggestion has been made which I hope will not be treated seriously, that instead of striking out paragraph (6) - which I believe a majority of the committee is in favour of doing - we should try to square things by increasing the rate of interest provided for from 3 per cent to 3-J per cent. It ought not to be necessary to point out how undesirable that would be, because it would necessitate, of course, the Commonwealth borrowing at two rates. If we increased the rate from 3 per cent, to 3-^ per cent, to meet the case, the Commonwealth would have to have a certain amount of debentures at 3|- per cent, as well as at 3 per cent., or else the whole lot at 3£ per cent., and that, I think, would not be a suggestion that would meet the case from the point of view either of the Commonwealth or the State. We have all heard the arguments on the question, and I content myself by moving -

That paragraph (6) be omitted.

Senator O'CONNOR

- I must ask the committee to retain the clause as it stands. I have answered some of the arguments used before, but I would like to say something in addition. These three paragraphs of clause 44 involve different methods of dealing with the very difficult problem the Treasurer of the Commonwealth will have to face. There is no doubt that in the settlement of these questions involving a very large amount of money and involving the credit of the Commonwealth and the credit of the States, the larger the discretion given to the Treasurer the better, so long * as we do not do something which is in some way unfair. The first objection that has been taken is as to the rate of interest. I would point out that we must not forget that what we are really doing here is giving compensation to a State for something we have taken from the State. It is suggested that, in giving that compensation, we should endeavour as far as possible to give back to the State the amount of interest which it is paying on its loans, or some approximation of that. FOI instance, Senator Sir William Zeal suggested that we should try to arrive at the average rate of interest which the State may be paying on its loans.

Senator Harney

- He referred to paragraph (c).

Senator O'CONNOR

- He may have been referring to that paragraph, but it comes to the same thing, because somebody else has used the argument. It really amounts to this, that we shall have regard not only to the amount of compensation and fair interest upon that, but that we should if possible try to give back to the State more than 3 per cent., because the State itself is paying more than 3 per cent, on money it has borrowed. What is the position of the case when we dealt with private property in another part of the Bill ? In arriving at a decision as to the amount of interest to be allowed we agreed to allow a' private individual 3 per cent, on his compensation. There was a long discussion about that and a division, and the House by a majority decided that 3 per cent, was to be allowed to the individual.

Senator Harney

- Senator O'Connor must remember the argument about the short loans, and that the 3 per cent, was given to the individual for a very short time. His argument is not perfectly frank.

Senator O'CONNOR

- I wish to be perfectly frank. I am trying to point out that all we shall have to do now is to fix the amount of compensation and the interest paid upon it. We either pay in cash or in an equivalent by paying in debentures bearing 3 per cent, interest. One of the objections to this paragraph (b) is that it does not put the States in a fair position, because it only allows them 3 per cent, interest. The only way in which we can regard the matter is that 3 per cent, interest is a fair amount to allow on compensation money. If the State is paid in cash there is an end to it. If we do not pay in cash, but agree to pay the State in five or ten years, whatever may be the due date of the debentures, it is a deferred payment, and we pay interest in the meantime at 3 per cent. It may be some guide to us as to whether it is fair to pay 3 per cent, when we remember that in regard to property taken from individuals we only give them 3 per cent.

Senator Harney

- Is not that only for a few months 1

Senator O'CONNOR

- It might be for a few months or it might be for much longer. It will have to be for the time that will elapse before the actual payment is made. It may be a few months or a few years.

Senator Charleston

- In arguing upon that matter before, the honorable and learned senator said it would be only for a short time.

Senator O'CONNOR

- The probability is that it will be only for a short time, but that does not touch the principle. Now it is said that we must give the State more than the individual, and that we must give the State 3£ per cent.

<page>3048</page>

Senator Harney

- That is not my argument. Three per cent, given to the individual may be worth 3⁴ per cent, given to the State, because the individual may get 4 per cent, .a year afterwards in the open market on the money.

Senator O'CONNOR

- That is a thing that I cannot understand, because we are dealing now entirely not on a basis of giving something that can be turned at once into money. We are giving something upon the face value of which the State will get 3 per cent. interest.

Senator Sir Frederick Sargood

- And which it can turn into money.

Senator O'CONNOR

- If the debentures go above par the State will turn them into money and make a profit, but if they go below par, they cannot turn them into money without losing. The honorable Senator Sir Frederick Sargood will agree with me that it is highly improbable there will be many transactions settled in this way, because the Commonwealth will not be likely to put itself in the position of having any very large quantity of its bonds in the hands of the States owing to the danger of the States putting them into coin, and perhaps floating a number of them at an inconvenient time.

Senator Harney

- Is there a clause like this anywhere else ?

Senator O'CONNOR

- There could not be, because, as the honorable and learned senator sees, this is the first occasion upon which anybody of this sort has had to deal with a State. Dealing with individuals is a very different matter. What I am pointing out is that if we deal with this question on the basis of a deferred payment of money, and that is what it is, we should settle the amount of interest on precisely the same principle as if we were dealing with an individual. When it is said that we must have regard to the amount of interest which a State is paying upon its debts, I say we cannot have regard to that. A State borrows on its credit generally. In South Australia, apparently, they can earmark a loan in respect of particular works, but in most of the States that cannot be done, and it is simply a loan on the general credit. In regard to some of these loans the State may be paying 5 per cent., and in regard to others 4 per cent, and 3 1/2 per cent. What connexion can there possibly be between the amount a State is paying upon its general indebtedness and the amount we are to allow the State as interest upon its compensation? It would be exactly the same principle as if in dealing with some individual who borrowed money on his general credit at 4, 5, or 6 per cent., when we took his property from him we should allow him compensation, and that

the interest allowed him on the compensation should be fixed by a consideration of the interest he is paying on the rest of his indebtedness. It must be clear to honorable senators that such a thing as that cannot be allowed to enter into the question at all. The only question to be considered is what is the fair interest to allow, taking the debentures as simply a deferred method of payment. Three per cent. is the amount fixed by the clause, and it is a fair amount for one reason, and that is that I think it may be taken to be about the rate at which the Commonwealth loans will be floated. In addition to that we know that if a State to-day has money, £4,000, £5,000, £10,000, or £20,000 in hand, and wants an investment for it, the best investment it could get would not make more than 3 per cent., and when we are paying compensation, not in cash, but by a deferred payment for four, five, or ten years, why should the State be put in a better position than it would be if it had the amount in cash and could invest it in the open market ?

Senator Harney

- This is on the basis of the retention of the clause, but the whole clause is bad.

Senator O'CONNOR

- The clause is attacked upon several grounds. It has been attacked because it is said it is unfair because the interest is too low. The whole clause is attacked, I understand, upon this ground. It is asked why should the State be put in the position of having payment for compensation deferred until the due date of the debentures ?

Senator Pulsford

- What is to be the due date ?

Senator O'CONNOR

- That will depend entirely on the date for which the loan is floated. The option is with the Governor-General, and whatever is the currency of these loans will be the due date. After all, unless the State wants to turn the debentures into cash, what does it matter what the due date is ?

Senator Sir Frederick Sargood

- That is what the State would want to do.

<page>3049</page>

Senator O'CONNOR

- We must deal with fair probabilities, and not impossible cases. I quite agree with Senator Sir Frederick Sargood that, whatever may happen to the 3 per cent. debentures of the Commonwealth during its first operations - I do not know whether we shall be able to float 3 per cents at par then - after the lapse of a short time they will be at least at par or above par.

Senator Walker

- If they are made available for trustees' securities.

Senator O'CONNOR

- I think arrangements will be made in that direction. However that may be, looking to the probabilities in regard to how these things work out, I do not think there can be any doubt that the debentures of the Commonwealth will be at par or above par within a very short time after the Commonwealth begins to carry on its operations in the money markets of the world. What right has a State to expect stock of such value that it can speculate in it? It would be a very bad principle to adopt that stock to any great extent might be speculated in by a State. The States should not be encouraged to speculate in it. I dare say Senator Smith is very well aware of an instance in connexion with Western Australia, where there was a large operation between the Government and a railway company. The company were paid in Western Australian stock, which they put on the market in large quantities and sold. They speculated in this stock in the money market, with the result that they brought down the whole of the Western Australian securities for the time. That is what we want to avoid in connexion with the Commonwealth, and that is a strong reason why the States should be put in such a position as to be discouraged from such transactions. Why did the committee negative Senator Sir Frederick Sargood's amendment ? For the reason that they thought that the Commonwealth Treasurer should have a free hand to deal with these matters as he thought fit ; and it is not to be supposed that the Commonwealth Treasurer will be unreasonable in his relations with the State Treasurers. Give the Treasurer the option of dealing with these matters in either of these three ways, and he may be trusted to deal with them in a way that will not prejudice the Commonwealth. That, I think, answers the objection that has been raised. I hope the committee will adopt

the clause as it stands. When the matter was last before the committee it was discussed very fully, and I have since had an opportunity of talking over the whole question with my honorable colleague the Treasurer, Sir George Turner. We have come to the conclusion that it will be safe, just, and reasonable to leave these conditions just as they are in the hands of the Treasurer. Therefore, I must insist upon this paragraph being left as it is.

Question - That paragraph (b) stand part of the clause - put. Committee divided -

Ayes 4

Noes 17

Majority 13

Question so resolved in the negative.

Amendment agreed to.

Senator Sir FREDERICK SARGOOD

- In regard to paragraph (c), I think that in taking over the debts it will be fair for the Commonwealth to take them at their face value. That would meet the difficulty of ascertaining what would be the market value.

Senator O'Connor

- If the Commonwealth had to take debts over at face value the result would be that it would only take over 3 per cents., whereas if it could take over debts at the equivalent value it could take over any debts.

Senator Sir FREDERICK SARGOOD. - I think that face value is fair. While it is true that in the olden times debts were floated at 6, 5, 4 1/2 per cent. and so on, the bulk of loans now are at 3, 3 1/2, and 3 1/4 per cent. There are very few loans in existence at over 4 per cent. I move -

That after the word " State," line 16, the following words be inserted, "at face value."

<page>3050</page>

Postmaster-General

Senator DRAKE

. - Would not the amendment render paragraph (c) entirely inoperative ? Because under the clause as it stands the Commonwealth has the option of paying in cash. The Commonwealth can raise the money at 3 per cent. Therefore the Commonwealth certainly will raise the money and pay cash if it is compelled to pay a rate of interest which is considerably higher than 3 per cent. The various States will no doubt be very anxious that the operation most profitable to them shall" be adopted, that is to say, that a proportion of their debts shall be taken over at the average rate of interest.

Senator Sir FREDERICK SARGOOD (Victoria). - I had quite forgotten that paragraph (a) had been carried. Therefore I ask leave of the committee to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendments (by Senator O'Connor) agreed to -

That the word "any," line 16, be omitted, with the view to insert in lieu thereof the word "the" ; and that all the words after the word "State," line 17, be omitted.

Senator CLEMONS

- I am hardly prepared to suggest an amendment to the clause as it now stands, but I think it my duty to point out that it cannot be left in its present condition, 'which is most beautifully vague. The difficulty, as already pointed out, is that moneys have been borrowed by various States for various works at various rates of interest ; and if the clause is left in its present condition there is no authority to decide which particular loan is going to be paid off by the Commonwealth Government. I am certain that Senator O'Connor will very much regret if any Bill which is under his control, and for which he is responsible, is left in this condition.

Senator O'Connor

- If I agreed with Senator Clemons, I should think so.

Senator CLEMONS

- If Senator O'Connor assures me that he is perfectly satisfied with the clause as it stands I shall know " what action to take.

Senator O'Connor

- I am quite satisfied.

Senator CLEMONS

- This matter has been thrashed out to the disgust, I might almost say, of the committee. We recognise that the clause cannot possibly meet the difficulties that will have to be encountered. With a view to testing the matter I move -

That after the word " State " the following words be inserted : - " At the average rate of interest paid by that State, and certified to by the Treasurer of such State."

Senator HARNEY

- Though I am sure there is a great deal in what Senator Clemons has ' said, I do not quite follow him in this amendment. So far as I can see this clause gives the Governor-General power to recoup the State for any property which it takes either by cash or by relieving the State of its liability for principal and interest in regard to any equivalent amount of debt. Does not that obviously mean that the Governor-General can only relieve such State of Such principal and interest in respect of its public debt as is a just equivalent for what has been taken 1 It is not a question of an equivalent in cash at all. The provision does not say - "By relieving the State of its liability in respect of an equivalent amount of public debt." It follows on with the clause which says that the amount has reference to the compensation, and therefore the meaning of it is that instead of paying that compensation in cash it is open to the Governor-General to pay it by a release of such amount of principal and interest of the public debt of the State as would be equivalent to the payment of that amount in cash. If that is the true meaning of the clause, I think it meets the objection of Senator Clemons. I think the word "amount" there has reference to the compensation that has to be paid, and the " equivalent " that is referred to means that, instead of giving compensation in cash, you give what is an equivalent in a release.

Senator Clemons

- What about the interest ?

Senator HARNEY

- The interest is provided for, too. If a higher interest has to be paid the amount varies downwards, but if a low. interest has to be paid it varies upwards.

Senator O'Connor

- That enables us to take over the liability, no matter what the rate of interest is.

Senator Harney

- That is what I take it to be.

Senator MACFARLANE(Tasmania).I was going to suggest to the leader of the Senate that the word "amount" in. paragraph (a) should be omitted and the word "value" substituted, as that word would convey really what is intended. If it is thought that we can carry out our object without that alteration, I shall be quite willing to leave the matter as it is.

<page>3051</page>

Senator O'CONNOR

- I think it is quite plain. In reference to Senator Clemons' amendment, I should like to point out that it would be really impossible to give effect to the object of the clause if it were adopted. The object of the clause is to enable the debt of a State to be taken over ;. to take it over completely ; and whenever it is taken over the interest upon the debt is taken over also. We might take over a debt carrying 5 per cent., 4 per cent., or 3 per cent, interest. The State is relieved of the liability in respect of whatever we take over. Therefore, it is quite inappropriate to a provision of this kind to insert these words providing for the debt to be taken over at a certain rate of interest. We take the debt over at the rate of interest payable on it, whatever it may be.

Senator Clemons

- What debt ?

Senator O'CONNOR

- Whatever debt we take over. The amount' of compensation is fixed, and we take over an amount of debt equal to that.

Senator Harney

- Calculating principal and interest.

Senator O'CONNOR

- Yes. Any financial expert can always tell the value of these debts. The advantage of leaving the clause in this wide way is that it enables the Commonwealth to take over the debts that it may be desirable to

take over first. If it is a debt in respect of which there are short dated debentures at a high rate of interest, the state would be anxious to get rid of it. We want to be able to take over debts becoming due at an early date, so that the Commonwealth Government may, if they see fit, operate themselves, and substitute their own for these debentures..

Senator HARNEY (Western Australia). - Suppose there was £100 worth of debts taken over at 6 per cent., and that the State could only obtain 4 per cent, on £100 which it received from the Commonwealth, there the Commonwealth would say - "In taking over from you this debt of £100 at 6 per cent , we value it in cash first at £100 and, secondly, at the amount which you lose in having to take cash instead of the 6 per cent. debt. You lose 2 per cent., and therefore we give you £100."

Senator Drake

- Put it this way : - £50,000 at 6 per cent, would be equal to £100,000 at 3 per cent.

Amendment, by leave, withdrawn.

Senator PULSFORD

- I am not at all willing to allow the clause to go without some provision being inserted which will give the States some power in the settlement. I move -

That the following proviso be added, to the clause : - " Provided that if the mode or modes of payment proposed by the Governor-General be not approved by the State, the State may appeal to the High Court, which shall decide the mode or modes of payment after hearing such evidence as may be brought forward."

I do not say that this suggestion is all that could be desired. I do not even say that it has not some objection from certain points of view, but it is still more objectionable for this clause to go forth as the act of the Senate, showing practically that we have given over to the Commonwealth the entire rights and powers of the States in dealing with their own debts. I do not think it is fair that the Government should ask this of the - representatives of the State. I do not consider that the representatives of the Government in this Chamber, who certainly ought to assist in safeguarding the rights of the States, should desire the clause to be passed in the state in which it now is without in some degree safeguarding all the rights of the State in the matter. If the representatives of the Government in the Senate cannot see their way clear to accept the proviso in the terms in which I have prepared it I should like them to suggest some other and better way.

Senator O'CONNOR

- I must oppose this amendment, very largely for the reason already given.

Senator McGregor

- It would be a fine amendment for the lawyers.

Senator O'CONNOR

- Yes. I must oppose it for the reason given by Senator Sir Josiah Symon that it would be imposing on the High Court a duty which is altogether foreign to its functions as a court. On what basis would it settle this question % On some principles of financial policy. Surely these are matters outside the ken of a Court of Justice I think the honorable senator will see that his proposal is really quite impracticable. For the reasons that have been stated already I shall ask the committee to reject it.

Senator PULSFORD (New South Wales). - The Vice-President of the Executive Council objects not to the principle which I want to insert in the clause, but only, I understand, to the exact method which I have adopted in order to bring about the desired result.

Senator O'Connor

- I object to the principle of referring these matters to the court at all.

<page>3052</page>

Senator PULSFORD

- Does the honorable and learned gentleman object to the principle which I want to bring into the clause in order to give the States some power over the arrangements ? Is the buyer to be the only judge as to the terms

Senator O'Connor

- It is not a question of a bargain. The property goes over to the State by the operation of the Constitution, or it is acquired by the operation of this Act.

Senator PULSFORD

- That is, if the property is immediately transferred. It will be acquired, however, year by year for many years to come, and certainly in those circumstances the States should have some say in a matter of this sort. If Senator O'Connor cannot see his way to accept ray amendment, or something else with the same object in view, to-night, I would ask that the whole matter be allowed to stand over until next Wednesday. I am certain that the clause is unsatisfactory, and if not in the Senate, then I am sure that in the other House it will be found necessary to revise it, and that it will be revised. I certainly think this is the Chamber in which the clause should be put into fair shape.

The CHAIRMAN

- It appears to me that there is a doubt whether Senator Pulsford's amendment does not conflict with what has already been done. We have already carried an amendment that the Governor-General is to have the option of doing certain things. The words "Provided that if the mode or modes of payment," which occur in the amendment, mean that provided the State shall be satisfied with the option. Therefore, I do not think that I am justified in putting it.

Senator O'Connor

- I take the same objection in order to. save time. I think it is out of order.

The CHAIRMAN

- I am afraid that it is. I must rule that it is out of order.

Senator PULSFORD

- It was understood that we were to go back to this clause, and one honorable senator undertook, with the consent of Senator O'Connor, that, after these paragraphs had been taken away, he would come back to the beginning of the clause, and move the omission of certain words about the option of the Governor-General .

Senator Sir Frederick Sargood

- That was only in case paragraphs (a) and (b) were struck out.

Senator O'Connor

- If the words relating to the option were meaningless, we were to leave them out.

Senator CLEMONS(Tasmania).- Seeing that Senator O'Connor is responsible in this matter, I think it is fair to ask him to explain paragraph (c) as he has left it. I will point out to him the doubt which I want to have solved. Is there any question whatever involved as to the market value, or is there involved, solely, as I think, the question of face value ?

Senator O'Connor

- And interest.

Senator CLEMONS

- And interest. But is there any question of market value?

Senator O'CONNOR

- It is purely a question of face value and interest. We cannot' put in face value, because that would bind us down to taking 3 per cents. solely. It only involves the principal and interest, without any question of market value.

Clause, as amended, agreed to.

Title agreed to.

Bill reported with further amendments.

<page>3053</page>

22:25:00

Senate adjourned at 10.25 p.m.