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1901-07-04

Senate.

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

PETITION

Senator KEATING

presented a petition from 5,109 citizens and ratepayers of the State of Tasmania, praying the Senate not to enact clause 54 of the Post and Telegraph Bill in its present form.

Petition received.

CHAIRMAN OF COMMITTEES

Casting Vote

Senator CLEMONS

(Tasmania).

Mr. President.

- I wish to draw your attention to the

Journals

of the Senate for to-day, where you will see it is stated that in committee last night -

The number of the ayes and noes being equal, the Chairman gave his casting vote with the ayes.

I submit, sir, that, in accordance with your ruling on that question, the Chairman did not give a casting vote. If this statement is allowed to remain on the Journals, it may create a very bad precedent on the subject which was thoroughly thrashed out and decided yesterday. I think you will agree with me that that vote - however it may have been designated by the Chairman - could only have been such a vote as it was within his power to give, namely, a deliberative vote. Therefore, the statement in the Journals that the Chairman gave a casting vote, is not strictly accurate.

The PRESIDENT

- I think the best way to avoid all difficulty will be to strike out the word "casting." I will see that it is done.

QUESTION

REGISTRATION OF POSTAL ARTICLES

Senator HIGGS

asked the Postmaster-General, upon notice -

Will he compare the system of registration of postal articles in vogue in Victoria with that in use in Queensland?

Will he adopt the Victorian practice ?

Postmaster-General

Senator DRAKE

- Before making any change I shall carefully consider and compare the systems in operation in the several States. .

ROTATION OF SENATORS

<page>2012</page>

Vice-President of the Executive Council

Senator O'CONNOR

I move -

That, in pursuance of section 13 of the Constitution of the Commonwealth, the senators chosen for each State shall be divided into two classes, as follows : -

There shall be for each State a roll recording the names of the senators elected for the State.

The name of the senator returned by the highest number of votes shall lie placed first on the roll, and the name of the senator returned by the next greater number of votes shall be placed next, and so on in rotation.

The senators whose names are placed first, second, and third on the roll shall be senators of the second class, and the senators whose names are placed fourth, fifth, and sixth on the roll shall be senators of the first class.

The motion which I now have the honour to move is rendered necessary by section 13 of the Constitution Act, which provides for what is called the rotation of senators. The object of the section is to insure that

there shall be every six years a renewal of half the senators, so that the Senate shall be brought into direct touch with the people. The section also provides that the Senate shall be a continuous body - that is to say, that there shall be always in the Senate a number of members who have at all events had three years' experience in the Parliament. Therefore, the periods of retirement are arranged in such a way that although they take place every three years, and half the Senate has to be re-elected in that period, half the Senate is always continuous. . For that reason it is necessary to make a starting point at the beginning of the Parliament; and it is provided that in order to arrive at a starting point half the Senate at the end of the first three years shall retire for re-election and that the remainder shall retire at the end of six years. It becomes requisite under this section to devise a method by which the half of the Senate that is to retire at the end of three years shall be selected. A motion becomes necessary because the Constitution has thrown upon the Senate itself the duty of determining in what way the division shall be made. Honorable senators will remember that the section does not provide any statutory method or any method which will endure beyond the occasion which has made it necessary. During the present period, therefore, we shall have to come to a conclusion as to the best method of making the division ; and a new Senate will, be perfectly free to make its own division in any way it thinks fit. I mention that because I think it is necessary in considering what we have to do to look at the immediate circumstances. We need have no concern with possible cases. The mode of division on any future occasion, which may present different circumstances, will be made then by a different Senate. We now have to do with the circumstances that concern us. Those who have taken any interest in the construction of our Constitution may remember that as it was originally drafted before the Convention held in Adelaide the clause provided that the division should be by lot. The provision remained in that position during the Convention in Sydney, but during the Convention in Melbourne was amended by striking out the words "by lot," thus leaving it to the Senate to determine in what way the division should be made. We have a perfectly free hand in determining by what method the Senate shall be divided into two classes. The Constitution provides that there shall be a division into two classes; that those of the first class shall retire at the end of the third year from the commencement of their term, and that those of the second class shall retire at the end of six. years from the commencement of their term. It seems to me that there are only two possible ways in which the division can be made - either by lot, or by taking the number of votes received by each senator at the elections. In other words, we may either provide that lot shall settle the question, or that the three highest on the poll in each State shall remain members of the Senate for six years, whilst the three lowest shall remain members for three years. I must confess that at first I was very much inclined to take the view that under all the circumstances the method likely to arrive at the best results in the interests of the Commonwealth itself was to make the division by lot. No doubt there are a number of very good arguments for that method of settling the question. One section of the American Constitution provides for the renewal of the Senate. There are three classes of senators. Six years is the whole period for which a senator is elected. The first class retires at the end of two years, the next at the end of four years, and the third at the end of six years. It was left perfectly open to the Senate of the United States to arrive at a division, and the method adopted was to arrange -the rotation by lot. They divided the Senate into three classes, and then a representative from each class drew by lot to determine which senators should be in the first class, which in the second, and which in the third. In several of the State Constitutions in America - I think in ten altogether - there are similar provisions for the rotation of senators. In all these cases the method is directed to be by lot. I do not know of any State Constitution in America where the rotation is to be by any other method. Those precedents certainly satisfy one that there is a great deal to be said in favour of that method of arriving at a division. But on the other hand, the method of taking the senators according to the number of votes they received, is not without example in Australia. I find that, according to the Constitutions of South Australia and Western Australia, where there is a rotation, and members have to retire at the end of a certain time, it is provided that the retirement shall be in accordance with the number of votes polled at the election.

Senator Sir Frederick Sargood

- And in the original Constitution of Victoria.

Vice-President of the Executive Council

Senator O'CONNOR

- - I was not aware of that.

Senator Glassey

- No matter by what means those votes were procured 1

Senator O'CONNOR

- The way in which the votes were procured is. a matter into which we cannot go.

Senator Barrett

- In all those cases it is provided by lot.

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Senator O'CONNOR

- And in all those cases the method of retirement appears on the face of the Constitution itself. It is to be understood that the election of a man carries with it his right to remain for a longer or shorter period, according to his place upon the poll. I merely mention these matters with the view of showing that in whatever way we look at the matter it is not without precedent and example. Really we have to decide, after the best consideration that can be brought to bear, which is the method for the Senate to adopt. After some fluctuation of opinion the Government has thought that the better plan to submit for the indorsement of the Senate would be that which is embodied in this motion. It provides that there shall be prepared a roll of the senators for each State. The names of the senators returned by the greatest number of votes shall be placed first upon the roll. The names of the senators elected by the next greatest number of votes shall be placed second, and so on, by rotation. The senators whose names are placed first, second, and third on the roll shall be senators of the second class; and those whose names are placed fourth, fifth, and sixth on the roll shall be senators of the first class. That plan insures that the senators lowest on the poll in each State - that is, the senators described in this motion as of the first class - shall retire within three years, and the senators of the second class at the end of six years. It appears to the Government that taking everything into consideration, that method is the fairest and the most obvious way of arranging the division which has to take effect under section 13 of the Constitution. The matter is important in this sense : that it is necessary that the Senate shall come to a conclusion as early as possible, because in the event of any vacancy occurring, the person who is elected will be returned for the remainder of the term of the senator whose seat has been vacated. I can understand a difficult question arising if a vacancy should occur before this question is settled. That makes it important in point of time. But it is also important to individual senators and to the States who have sent them here that the fairest and best method of arriving at a division shall be come to by the Senate.

Senator STEWART

- I entirely agree with the motion. I think in all the circumstances it provides the proper way of settling the term for which senators shall hold office. It appears to me that those senators who received the highest number of votes for the time, at any rate, enjoy the confidence of the electors in a greater degree than those who polled the lesser number. There is one matter, however, in connexion with this motion about which I am not quite clear. Am I to understand that if a senator of the second class were to die, his successor would hold office for the period of six years 1

Senator Glassey

- No, he would hold office for the balance of the term.

Senator Drake

- That is quite right for the second class.

Senator Sir Josiah Symon

- He must run the gauntlet of an election.

Senator STEWART

- I read section 15 of the Constitution Act differently -

If the place of a senator becomes vacant before the expiration of his term of office the House of Parliament of the State for which he was chosen shall, sitting and voting together, choose it person to hold the place until the expiration of the term or until the election of a successor, as hereinafter provided, whichever first happens.

When we come to the next paragraph of the section we find it provides that -

At the next general election of members of the House of Representatives, or at the next election of senators for the State, whichever first happens, a successor shall, if the term has not then expired, be chosen to hold the place from the date of his election until the expiration of the term.

My reading of the section is that if a senator of the second class were to die to-morrow his successor would have to run the gauntlet of an election at the first election.

<page>2014</page>

Senator DOBSON

- I cannot say that the mode which my honorable friend has selected on behalf of the Government for dividing senators into two classes is unfair. It appears to me that the three men who headed the poll in each State may be said to more fully represent the choice of the electors than the three who stood lowest on the list. Therefore I have no objection to this proposal. I desire to point out, however, that the election of senators for Tasmania is . slightly, if not greatly, removed from the principles which govern the elections in the other States. As honorable senators are aware, we have in Tasmania a system of proportional voting, the very idea of that system being that minorities shall be represented. Before we could obtain any knowledge of the position in which the honorable senators for that State really stand in the minds of the electors, I take it that we should have to analyze most carefully every vote given upon each ballot-paper. I may say at once that Senator Keating and Senator demons are undoubtedly first and second on the poll for Tasmania. No scrutiny of the ballot-papers would alter the positions that they hold in the minds of the electors. Then, sir, comes Senator O'Keefe, while I come fourth, Senator Cameron fifth, and Senator Macfarlane sixth. It would be almost impossible for any one to say, without a thorough scrutiny of the ballot-papers, 'which of the four stands first in the minds of the electors. I do not raise the point so as to involve any question between Senator O'Keefe and myself ; but what I desire to point out is that, looking forward to the time when proportional voting will be adopted for all the States, and believing, as I do, that it may' hereafter be the saviour of democracy,' if ever it wants a saviour - and it is quite likely that it may--

Senator Sir Josiah SYMON

- More extraordinary things have been heard of.

Senator DOBSON

- Yes, it is quite likely. Everything is possible in a democracy, even that it should save itself. Therefore I think it is well to point out that I do not consider the Senate should quote this motion as a precedent which shall for all time govern the election of senators if proportional voting is adopted. I regret that the returns relating to the Tasmanian election, which I asked for recently, have not yet arrived, because if they were here I should be able to point out to honorable senators what an intricate matter the election of senators under the Hare system is. Under that system it is quite possible for a senator to be sixth on the poll, and yet the man placed seventh or eighth on the list might be the choice of the general body of electors if it were a run. between two of them.

Senator CLEMONS

- -Is that an argument in favour of proportional representation ? It seems to me that there are certain holes in it.

Senator DOBSON

- I would remind the Senate that I commenced my speech by saying that the principle of proportional voting was that minorities should be represented'. "What I wish to show is that the Hare system tries to give each section of the people the exact proportion of representation to which it is entitled, having regard to its strength. If every member of one particular class or way of thinking were to join together and vote No. 1 for a certain man, it is quite certain that he would get one of the six places, whilst the seventh, eighth, or ninth man might, if there was a race between four of them, each defeat the successful candidate.

Senator McGregor

- That is a bad argument.

Senator DOBSON

- It is not a bad argument. It is the system that my honorable friend does not understand, and it is owing to a want of knowledge of that system that the electors in other parts of the Commonwealth do not adopt it. If it does not do what I claim for it, then it lacks the very principle for which people support it. It has the effect of allowing a section of the community to put in one of the six senators,, whereas if you eliminated the other live and. left the sixth man to run against the seventh, eighth, or ninth man, he would be defeated.. Therefore, the Hare system comes in, and says it is just and equitable that those who voted for

No. 6 should get him in, because in proportion to their strength, as compared with other classes of the community, they are entitled to one senator. I have much pleasure in supporting the motion, but I think it would be hardly a fair principle at all times¹ to apply to the election of senators if the Hare system obtains.

<page>2015</page>

Senator Lt Col NEILD

- I rise, not to oppose the motion,, but to oppose the proposition that the poll recently taken for the Senate shows that the confidence of the people necessarily rests in a higher degree in some .of the successful candidates than in others. It will be seen that this cannot be the case, when we have regard to the fact that in no two States were the elections conducted under similar lines or like conditions. For instance, in West Australia plumping was permitted. In Tasmania, the electors could plump for three candidates. In New South Wales, plumping was prohibited. I do not know what system was adopted in the other States ; but it is sufficient for my purpose that in three of the States the conditions of election were wholly dissimilar in regard to this point. There were other dissimilarities. In Tasmania, for- . example, there was a double vote - I refer to the Hare system - by which results were obtained which could be secured in no other State. Another point to be considered is, that in some of the States a deposit was necessary, and that tended to reduce the number of candidates. In New South Wales we had the extraordinary spectacle of no less than 50 candidates standing for the six seats. In no two States were the conditions of election sufficiently similar to warrant, in my estimation, any hard-and-fast line being followed in determining what was¹ the order of the public choice. It has already been shown to the Senate that in New South Wales there were no less than 39,000 informal votes, due no doubt- very largely to the extraordinary number of candidates. The names on the ballot-papers were printed so closely together - that it was hardly possible to scratch out one without running the risk of scratching out another.

It may be said, as I said, " This is a great bungle. Why were the names not printed further apart?" The difficulty, I have ascertained, was that if the size of the ballot-papers had been increased, it would have necessitated the manufacture of 2,200 ballot-boxes. If the ballot-papers had been enlarged, larger boxes would have been necessary for holding them. I simply point this matter out in order to show that the great number of informal papers was due, not so much to ignorance, as to the exceptional conditions. Each of these 39,000 ballot papers was representative of six votes, so that we had something approaching a quarter of ' a million of wasted votes in New South Wales.

Senator McGregor

- If the honorable senator had got all of them he would have been all right. . Senator KEATING - If they had all been counted the honorable senator might not have got in.

Senator Lt Col NEILD

- It is quite possible, but in view of the fact that, with 50 candidates, and these extraordinary number of informal votes, only 9,000 votes separated the first from the sixth on the poll, I think it is very hard to say what was the intention of the electors in placing them in that order. A very few of these informal ballot-papers would, if counted, have made a great difference. The motion, therefore, I think, is rather a rough and ready adjustment of the difficulty than an actual proposition that it is a method absolutely just and positively equitable. I give it my support merely as a matter of convenience, and not as a matter of equity, or as clearly indicating the will of the people.

Senator PULSFORD

- It was not my intention to have spoken on this motion but for the speech delivered ' by Senator Lt.-Col. Nield. I desire to vote for the motion, not because I think it is a rough and ready method of determining this question, but because I conceive it to be called for by the equity of the occasion. We, who became candidates, were prepared to run all the risks of the election, and we depended for our positions absolutely upon the votes that were legally countable. I was placed sixth on the list. I am making no excuse, nor do I think it is necessary to do so, for my position on the poll. Of course, I have got my own private feelings. I may conceive that my merits or services to the public entitled me to be placed first on the list-, but I recognise that I stand sixth. I am prepared to accept the votes as given by the people, and to say that the three honorable senators who topped the poll ought, by the very equity of the case, to be booked for a period of six years, and that we, who have achieved a lesser number of votes, should only hold our seats for the shorter period. I feel, however, that we have all some cause of quarrel with those honorable senators who were members of the Convention, and created the section in the Constitution Act

which has put upon the Senate the disagreeable necessity for picking and choosing. I certainly feel that if we could make any choice at -all in ejecting at an early period a certain number of honorable senators, it would be very becoming to dismiss at the end of the first three years those who were members of the Convention, and who have put upon us the necessity of going into this matter.

Senator O'Connor

- That would suit the honorable senator all to pieces.

Senator PULSFORD

- Failing that possibility, I accept as an equitable arrangement the motion-

Senator WALKER

- I simply rise for the purpose of pointing out that my honorable colleague, Senator Pulsford, has said to-day what he announced when the matter first came .before the Senate, shortly after Parliament met, so that nobody can say that he is recognising . merely the inevitable. As an honorable man, he has recognised from the very start the democratic principle that the men with the most votes are entitled to be given the full term of six years. I merely wish to point out that my good and dear friend, Senator Pulsford, has been guided throughout by the desire that those placed at the head of the poll should receive that to which they are entitled by their position.

Senator MCGREGOR

- I have noticed that, with the exception of Senator Walker, who only rose to give a little laudation to his dear friend, Senator

Lt.-Col Neild

Senator Lt Col Neild

- No, to Senator Pulsford.

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Senator MCGREGOR

- I think- honorable senators will excuse 7ne on this occasion when I affirm that there is an absolute feeling of amity between Senator Lt.-Col. Neild and myself since yesterday evening. I have the right to make mistakes. I meant to refer to Senator Pulsford. I have observed that those who have spoken are .senators who, like myself, were at the end -of" the list. .Certainly they have expressed a very great deal of magnanimity. I have heard no magnanimous expressions from those at the top of the poll. We at the bottom are all magnanimous. We want every one to hare what- is right. If 'I had- been at the top I should, have shown a . little magnanimity, and-have endeavoured to do justice to those at the bottom. No attempt of that description has been made. No expression of opinion has-been offered, by our honorable friends at the head of the poll. I only desire to call attention to that fact, although I am entirely in accord with the motion which I hope will be carried unanimously.

Question resolved in the affirmative.

PROPERTY FOR PUBLIC PURPOSES ACQUISITION BILL

second heading.

<page>2017</page>

president of the Executive Council

Senator O'CONNOR

. - I move -

That this Bill be now read a second time. - " It will be generally admitted, I think, that the power which the Government wish to acquire by this Bill is one which is essential to the Commonwealth. It must hold property. It has already vested in . it certain property, and it will, in certain cases, be driven probably to acquire property by some compulsory process. But. in all. these cases the principle must be observed of equality of sacrifice. Although it may be necessary for public purposes to interfere with the private rights of individuals, the law should carefully guard the lights of those individuals, so that they shall suffer no more arid pay no more than the rest of the community for the. general benefit. So this measure gives power to the Commonwealth to acquire possession of lands which maybe necessary for public purposes, and provides machinery by which compensation shall be allotted in such a way as to do justice between the individuals whose property is interfered with, and the Commonwealth for whose benefit it is taken. The power of the Constitution under which this Bill will be justified is contained in section 51, subsection (31), by which the Parliament is given power to legislate regarding -

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.

[12S]

There are several classes of cases to which this Bill will be applied. "In the first place there will be the cases which come within section-85 of the Constitution. All the transferred departments have property which becomes, on the taking over, of the services, vested in the Commonwealth; and under section 85 there is a provision that compensation shall be made to the State in accordance with the law of the Commonwealth. There are also, cases in which property has been taken over in part from the State. That is to say, where lands or property have been used, but not exclusively, for the transferred services. In these cases an estimate of value is to be arrived at, and although the compensation is to be arranged according to the law of the State in force at the time, the payment of compensation is to be made and the details ascertained under the provisions of this Bill. There also will be a class of cases not involved in section 85. In time to come it will be necessary to acquire the property of individuals throughout the Commonwealth for public services of different kinds. For this purpose also the provisions of the Bill will be necessary. There is a third class of acquisition of lands for public purposes which I will deal with separately, for although the provisions of this Bill will be applicable to it, it will have to be dealt with principally by a special enactment. This is the acquisition of the federal territory which may be necessary for the site of the federal capital. It is impossible to say now whether the territory which will be determined upon for the site of the federal capital will be property entirely granted by the State of New South Wales, as it may be, or whether it will be necessary to use the compulsory powers of the Constitution in order to acquire some site. But whichever course is followed the Government have determined to make a new departure with regard to the holding of property in that territory. They have decided to reserve to the people of the Commonwealth for all time the benefit of the increase in value. They will not alienate a single foot of territory; but it will be dealt with on some principle of leasing, which will preserve to the people the benefit of what has been described as "the unearned increment," that is to say, the benefit which arises from the increasing value brought about by the whole people of the Commonwealth. That will be preserved for all time to the Commonwealth itself. It is quite evident that such a principle cannot be dealt with just in what may be described as a slap-dash method. I was very much struck by some remarks made by Senator Playford a few days ago about the natural craving, if I may use the expression, there is in almost every human being to acquire the freehold of the land which he occupies. Care will therefore have to be taken in carrying out this principle, that the leases are arranged on such terms and for such periods as will not discourage persons from improving the land and making the federal capital and federal territory in point of value what we all hope it will be.

Senator Millen

- Does that apply to land to be acquired under this Act, or is the honorable and learned gentleman speaking now only of a future Bill which may be introduced?

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Senator O'CONNOR

- I am pointing out that this Bill may be and can be applied in respect of land acquired for the purpose of federal territory; but I am pointing out at the same time the considerations which must dominate the disposition of the federal territory will be of so different a kind from that which applies to ordinary land that it will be necessary to have special legislation to deal with the acquisition and disposition of lands in the federal territory. I make this statement, although it is but incidentally now, because this is a matter of policy which has been determined upon, and which it is just as well that the Senate should be aware of as soon as possible. So that honorable members who may be discussing this question, having in view the federal territory in which the federal capital will be, must always remember that there must be some special legislation to deal with that, and that the application of this Bill to territory such as I have described must be more or less incidental. While on that question I think it will be generally admitted that it will not do in the public interest to apply the principle of leasing land acquired for public purposes, generally throughout the Commonwealth. In Victoria, New South Wales, or any other State, we may acquire a piece of land for Commonwealth purposes, and it is quite evident that we must be prepared to treat that in an ordinary business way. We may require to sell, lease, or dispose of it in different ways, and the hands of the Commonwealth in regard to any land of that sort must be left absolutely free. Coming to the measure

itself, it will be found that it follows very well-worn lines of legislation, going back to the Land Clauses Consolidation Act of England, passed in the 29th year of the reign of her late Majesty. Similar provisions have been in force not only in England but in many of these States for a great many years. For the benefit of those .senators who may perhaps not be familiar with the provisions of those statutes, I propose to state as concisely as possible and in a general way the provisions of the measure. First of all there is the power given to purchase land in the ordinary way. There must be that power, because circumstances may arise in which it will be 'necessary to acquire land quickly, and in which really the best and cheapest method of acquiring land in the interests of the Commonwealth will be 'to purchase it. Next there is the power to acquire land compulsorily. This Bill will apply to land acquired for public purposes only, but there is a very elastic definition of . " public purposes." The definition is " any purpose in regard to which the Commonwealth may make laws." So that it embraces the whole scope of legislation of the Commonwealth on every subject in regard to which the Parliament may legislate. Public purposes being defined as I have described, where land is required for any public purpose the Governor-General, that is the Governor in Council, issues a notification of resumption in the Gazette. The particular land required is acquired by that resumption, and is vested, absolutely free of all encumbrances of every kind, in the Commonwealth. The next question is how to deal with the compensation. -The person whose land is taken is to be compensated, but in arriving at that compensation care must be taken to safeguard the interests of any persons who may be interested in different ways in the land. There may be mortgagees, a landlord, or tenant; persons may hold other interests, such as the interest of infants, the interests of married women, or the interests of committees, in cases of lunacy. All these various interests are considered and provided for, and care is taken that in the distribution of the money compensation paid for the land every one of those persons will get his share in accordance with the interests he has in the land, in other words, the property becomes the property of the Commonwealth, and the rights of the owner of the land, and of every other person interested in it, become claims to be satisfied in accordance .with the provisions of this Bill. There is the process then of settling the compensation, but before I deal with that, I must state on what lines compensation is given. In the first place the value of the land taken is given. That value is to be ascertained as the value of the land on the- 1st of January preceding the date of acquisition, and the value is to be fixed without any regard to any added value which it may have acquired by reason of the work being in contemplation for which it is required. I think the experience of all of us in the working of these Acts in the different States shows that we must fix some period before the actual time at which the notification of resumption takes place. It is difficult to keep things quiet, and it leaks out that land is required for public purposes, and if we take the value of the land at the date of notification of acquisition we shall probably find in many cases that the land has gone up immensely in value, simply by reason of the general knowledge that it was required for a particular purpose. There is no ground of justice on which that added value of the land ought to go into the pockets of the owner. That added value, if any, really belongs to the Commonwealth, and certainly not to the owner of the land. We must fix an arbitrary period, and it appears to us that to adopt the 1st of January preceding the date of acquisition is to provide a fair period. It will, of course, be . longer or shorter, according to circumstances ; but, taken generally, it will be a fair- period to fix.

Senator PLAYFORD

- It may be less than a month or a week.

Senator O'CONNOR

- It may be eleven months. It is very difficult to arrive at any arrangement by which we can do actual justice.

Senator PLAYFORD

- It would be better to say six months prior to the acquisition of .the land.

Senator MCGREGOR

- I think a year is a very fair compromise.

Senator O'CONNOR

- That is a matter of detail which can be dealt with later. The value of the land, therefore, is the first * matter to be considered. Then, if the person has suffered any injury by reason .of the land acquired being cut off from other land of his, he is entitled to be paid for what is generally known as severance.

It will also be taken into consideration if he has suffered any injury through the erection or carrying out of

any work. For instance, land may be resumed for the purpose of erecting electric machinery for the Postal department, and should the result of that be the depreciation of the value of adjoining property belonging to the same owner, he would be entitled to some compensation for that, and that would be considered also. Then there is another thing which as a set-off against all these matters will be taken into consideration. We put on one side the value, the amount of damages for compensation, and the damage suffered through the carrying out of a public work ; but we get another item on the other side : If land is resumed for the purpose of a public work or building of any kind, and an added value is given to adjoining land of the same owner, that is put to the credit of the Commonwealth, and the tribunal estimating the damages to be paid will take off from the amount any increase of value to the adjoining land retained by the owner which is brought about by the carrying out of the work in question. That appears to me to be an eminently fair way of dealing with the matter.

Senator Harney

- It not only gives him the advantages, but takes from him the disadvantages.

Senator O'CONNOR

- It appears to me that the person from whom the land is taken should be treated upon the basis of the whole effect to him financially of the transaction, and the balance of the transaction only should be paid to him.

Senator Harney

- It gives him the result.

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Senator O'CONNOR

- We give him the result, and it seems to me there is no fairer way of dealing with the question than that. These being the three heads of compensation to be considered, the next question is, how is it arrived at? It is arrived at in this way : A claim must be sent in by a certain period. That claim has to be considered by the Attorney-General, and if he considers that the claimant has a good prima facie title, then the Commonwealth Government make a valuation of the property and the damages, and make an Offer. If the parties do not agree as to what is a fair thing to be paid within a certain period, then the claimant may bring his action into court. There is a provision here that when it goes into court the matter is to be settled by the Justice of the High Court sitting without a jury. I have no doubt there will be a difference of opinion on that question ; but I think the experience of most of us who "have had to do with claims for compensation is that however, admirable a tribunal a jury may be for certain purposes and deciding certain issues between the parties, it is not the kind of tribunal which gives most consistent results in dealing with values, especially where a Government is the defendant. I think it will be generally found that if we are to have some systematic way of settling valuations - and I think it highly important in the interests of fairness - that that should be done - there is no better way of arriving at it than by putting the decision of questions of this kind into the hands of a Justice of the High Court, who presumably will be a man trained to estimate evidence, and trained in the inquiries necessary to find out really what loss has been suffered, and who will have no other motive than that justice shall be done in every case. I think that will be found to be a much more satisfactory tribunal than juries, who may be affected in one place or another, and according to the locality may be more or less influenced by considerations other than the absolute fairness of the compensation to be paid by the Commonwealth to the individual.

Senator Best

- There is no arbitration

Senator O'CONNOR

- No.

Senator PLAYFORD

- With the consent of the parties.

Senator O'CONNOR

- It is not provided for by the Bill, but there is no reason why under the ordinary law the Commonwealth and the parties should not arbitrate if they have a difference.

Senator MILLEN

- Is there not a proviso in the Bill which prohibits arbitration ?

Senator O'CONNOR

-No. The honorable senator will see in clause 16 a provision that the Justice before whom the case is tried shall not send it to arbitration except by the consent of both parties. There is an implication there - and I think it is the only way in which it deals with it - that there may be arbitration. Of course, at times a court of arbitration is a good tribunal, but sometimes it is not. It entirely depends upon the circumstances and I think it is a very good plan to provide that, when the matter comes before the High Court, the Judge shall have put upon him the duty of deciding the case (unless both parties are agreeable) that it shall be taken before some other tribunal. -Senator DOBSON - Do, I understand that the Judge would be forbidden by this measure to give anything for compulsory sale? -Senator O'CONNOR. - Certainly not. There is nothing to direct the Judge, or to guide him even as to the grounds on which he is to give compensation. -Senator Glassey: - That will be within the discretion of the Judge himself.

Senator O'CONNOR

- It will be within the discretion of the Judge himself, and it is one of the matters that are always considered fairly.

Senator Dobson

- Is the honorable and learned gentleman sure that it is left open?

Senator O'CONNOR

- It is left entirely open. That, however, is a matter which honorable senators can consider in detail in committee. So far, I have spoken about ascertainment of compensation, particularly in cases where individuals or corporations, and the Commonwealth are concerned. But there is a special provision in this Bill dealing, necessarily for the first time, with cases in which a State is a party. Those cases are dealt with on this principle: Where the State owns Crown lands, it is dealt with as the owner of the freehold, exactly in the same way as any other owner of freehold is dealt with. But there is a special provision which will set at rest, I think, in a proper way, a suggestion which is sometimes made in public, that where land, the property of a State, is taken for Commonwealth purposes, the State is to be entitled not only to the value of the land, but also to some compensation for loss of the rights of revenue, and of taxation over that land. It is expressly provided in this Bill that no such right will be given. Clause 43 says the State shall not be entitled to compensation in respect of the loss of any rights of dominion, taxation, or any other rights that arise from the fact of its being the governing power over the resumed land. Of course, that clause may have a very important application.

Senator HARNEY

- The State is to be treated as a private vendor

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Senator O'CONNOR

- Yes; and it seems to me that that is eminently reasonable. Because it will be very difficult to estimate the value of the taxation rights and what value to assign to its right of dominion. Besides, the whole purpose and scope of this federation is that where land is required for the purposes of the Commonwealth it shall be given to the central authority, and with no other recognition of rights than, the ordinary rights of ownership, gives to any individual. I think I have dealt with all the important matters. There are a number of clauses which are taken up with the details of the ascertainment of title. The Government will not, and are not bound to, pay over compensation until they have satisfied themselves as to the titles of the different claimants. A number of provisions deal with cases of that kind, and also with the payment of compensation to different classes of interests. There are other provisions regarding costs, giving compulsory powers to enter upon land and to view it, and compulsory powers of taking possession. In other words, there is all the usual and necessary machinery to carry into effect the principles to which I have alluded. I think it will be found by honorable senators who go through the Bill that it has been carefully prepared, and is calculated to give the fullest powers to the Government for the purpose, of acquiring, all property which may be necessary for the public purposes of the Commonwealth; whilst, at the same time, good care is taken that not only the interests of the States, involved, but the interests of the individuals concerned, are fairly and justly dealt with.

Senator Sir JOSIAH SYMON

- The speech of the Vice-President of the Executive Council has crystallized all the leading features of this Bill, which is substantially a measure to give effect to a principle that prevails in every self-governing State - that of the compulsory acquisition of lands for public services. That is the

principle of the measure, and, therefore, upon the second reading-it is probably unnecessary to add anything, to the bare enunciation: of that principle.- All the rest is matter of detail.- The most important portion of the machinery' is that comprised in Division 2 of Part II. Some clauses in that part come to my mind with a considerable air- of novelty. They appear to be taken, from or modelled upon the provisions- in- the New South Wales Act, but they, adopt, a method of acquiring land -which to me, at any rate, is novel. I would-invite -the attention of Ministers, as well as of the senators, to the mode by which the object is accomplished.

Senator O'Connor

- It is not novel in New- South Wales,-, where- this method has been working- for- a great -many- years;

Senator Sir JOSIAH SYMON

- Perhaps the honorable and learned senator will tell us whether these clauses are identical with or adaptations- from the sections- of ' the New South Wales statute ? . If they 'are identical with those provisions, they differ very materially from the provisions of - the Lands Clauses Consolidation. Acts as they have been in force in England, and have been adopted in many of the States of the Commonwealth. Under these, provisions lands are acquired after -proper notification to the- owner, and after - which probably was rather a cumbrous method of proceeding - there were- certain notices to treat, and various other steps taken, which were susceptible: of- reform and simplification. But this Bill is open to grave- consideration on the other side because it provides that upon- a notification being, published in the Gazette, and laid before- both Houses of Parliament - in fact; upon the publication in- the Gazette alone- - the kinds described in the notice are immediately acquired- by the Commonwealth;- The owner of the property, without his knowledge it may be, and without any opportunity of' discussing, the question with the -authorities, is deprived of his property by the mere publication of a notification in the Gazette, which he may never see.

Senator Dobson

- We have had that system in Tasmania for some years.

Senator Sir JOSIAH SYMON

- JOSIAH SYMON:- It is -a very drastic system, and is a little un-English.

Senator Sir Frederick Sargood

- - It has been found so in - New South Wales, where it has worked badly.

Senator O'Connor

- It has worked very well I think, in New South Wales. That is the -general opinion.

Senator Major Gould

- The valuation is taken, as at the- time of £. resumption, and therefore it is - not desirable to give any notice. .

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Senator Sir JOSIAH SYMON

- That is -a different- thing, because the Bill provides for another system which meets that difficulty in regard to the -valuation. That would be a homogeneous piece of, legislation.- If we were to say that the valuation was referred to the period of acquisition, and the only way by which we can prevent exorbitant claims being made or enforced . is by saying.. that the acquisition should take place upon a notification in the Gazette, then it would be a consistent method ; but where, as in a subsequent clause, we provide in another way for preventing extravagant claims or claims founded upon an increase of value by reason, perhaps, of the public notification under clause 17, it would scarcely seem to be necessary that we should adopt this very drastic way of taking a man's property absolutely from him, leaving him merely the compensation to be ascertained without any communication, without, it may -be, any knowledge on his part, and then under a subsequent clause, if he wants to enlarge the time within which, under clause 12, he may take steps for the purpose of putting in his claim, we make him bear the cost of an application to a Judge of the High Court for an extension of the 90 days' time. That seems a little hard, seeing that we do not provide for giving the owner personal notice. I invite the attention of the Senate to the consideration that it will be, at any rate, fair and just, that in addition to the publication in the Gazette we should give the land-owner some personal intimation that we intend to deprive him- of his land, and not merely take it all, so to speak, in secret - because there is no system of publicity so effectual as the publication of a notice in the Gazette - and then if he happens to overlook this interesting periodical, we

make him pay the costs of going to a Judge in order to get a few days' extra time to put in a claim. .

Senator McGREGOR

- I think the Gazette notice is merely a notice that the land-holder -has been notified.

Senator Sir JOSIAH SYMON

- No; 'the Gazette notice is the only notice, and it is final. There is no other provision so far -as I can see. I hope it will be made, because we desire, even to those who are -suffering under the obloquy of being landowners, to give fairness and justice.

Senator Dobson

- Before the Government take their land, their officers will have to go upon it and survey it, so that he will get lots of notice.

Senator Sir JOSIAH SYMON

- That I find sometimes a very unsatisfactory way.

Senator O'Connor

- In actual practice the Government generally try to buy the land from the owner.

Senator Sir JOSIAH SYMON

- But there is no provision for it here. I do not suppose that there will be any officers deserving of the designation of "Jack's in office " under the Commonwealth ; but we know that there has been a great deal of arrogance in regard to the taking of men's lands when railway engineers and other officials have been anxious to get on with a certain work. There is no doubt that the authorities would have to take possession, but it would be a little trying to a landowner to have his first intimation that his land was taken from him for the purposes of the Commonwealth by means of an invasion by a lot of navvies.

Senator Dobson

- The Bill ought to give seven days' notice. That is what, ours does.

Senator Sir JOSIAH SYMON

- I only call attention to the point because that part of the Bill seems to me to be deserving of the most consideration. I doubt whether seven days' notice will be enough, but the matter can be dealt with in committee. There is no doubt that under clause 17 there is an excellent summary of the bases on which the compensation shall be assessed. I am afraid that Senator Dobson would find that under that provision his clients who were seeking compensation would not have a very strong case before a Judge in regard to the 10 per cent, if the assessment is to be made under the clause as it stands.

Senator Dobson

- I quite agree with the honorable and learned senator.

Senator Sir JOSIAH SYMON

- While, of course, every one - Judge or jury, or any other person assessing compensation - deals liberally with the person whose land is compulsorily taken - the principle of the law is that it shall be a liberal estimate - yet there is nothing in this clause which absolves the tribunal from assessing the value of the land, whether liberally assessed or not, at its actual value at the time specified.

Senator Harney

- Of course he will take the liberal view 1

Senator Sir JOSIAH SYMON

- That is a mere ride of assessment ; but no rule of procedure would override this provision.

Senator Harney

- There is no percentage mentioned in the Land Clauses Consolidation Act.

Senator Sir JOSIAH SYMON

- No ; we specify the elements of assessment here.

Senator O'Connor

- It has been decided over and over again that it is competent for a jury to give 10 per cent., although it is not allowed in very many cases under the Lands Clauses Consolidation Act.

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Senator Sir JOSIAH SYMON

- That Act does not specify, as we do in clause 17 of this Bill, the precise elements which are to make up the valuation. In this clause it is said that regard is to be had to the value of the land taken, and -also - To the damage, if any, caused by the severing of the land taken from other land of the claimant; or by the

exercise of any statutory powers by the Minister otherwise injuriously affecting such other land.

Senator Harney

- I understand that the 10 per cent, is not supposed to be an addition to the value, but is supposed to be a margin in case of under-valuation.

Senator Sir JOSIAH SYMON

- No doubt.

Senator Harney

- It is to make sure they are on the right side.

Senator Sir JOSIAH SYMON

- It is more than that. We assess the value of the land, and we add on 10 per cent, for the compulsory taking. That is the equivalent which is always allowed to a man for being forced to part with his property against his will. But the rest of clause 17 adopts a very excellent rule, so as to prevent an increment arising from 'the improvement occasioned by the construction of the works, and the set-off is adopting the modern system of "betterment." That is, if the rest of a man's* property is greatly enhanced in value by reason of the execution of a proposed public work, he shall not reap that profit and also receive the full value of the land he gave up to the Government.

Senator Sir William Zeal

- What about the land-owner's neighbour, who might reap all the advantage from the public work?

Senator Sir JOSIAH SYMON

- That is one of the inequalities which may arise, and which it would be impossible to prevent. This, however, is more a matter of policy, that will be dealt with in committee.

Senator McGregor

- If we adopt a good system of land tax we can get at that. ' Senator Sir JOSIAH SYMON. - Then a proviso is added to the clause, I suppose in the interests of the land-owner, that he shall not be required to pay if the enhancement of any value exceeds the value of the property taken from him. I do not quite agree as to the disadvantages of having a jury to assess these matters. I have heard Judges exclaim against the responsibility of deciding on the land values, in cases of claims of this character, without the assistance of either assessors or a jury. We know the extraordinary conflict which takes place very often between experts in regard to the value of land as in regard to other matters, and I am still old-fashioned enough to believe that, in adjusting the conflicts of evidence, and in weighing the testimony of witnesses, no tribunal yet discovered is superior to a jury. But next to a jury in a matter of this kind it might be a great advantage to have some provision in regard to assessors. I quite agree as to the desirability of having a Judge sitting and directing the investigation ; but there are many cases of conflicting facts and opinions and conflicting estimates of value in which a Judge might very well be assisted by assessors or by a jury.

Senator Glassey

- Then there might be a conflict on the bench, because very likely the assessors might hold opposite opinions.

Senator Sir JOSIAH SYMON

-Just, as we have now in cases in the Admiralty Court, we shall have a Judge sitting with two assessors.

Senator Glassey

- The two assessors may combine, and the Judge may be left and overpowered by the majority-- . -

Senator Sir JOSIAH SYMON

- Except on matters of law, there is no particular reason why a Judge should not be left.

Senator O'Connor

-; - In Admiralty cases the assessors deal with expert matters about which the Judge knows next to nothing. But here the Judge will understand as much about the evidence on values as any of the assessors.

Senator Sir JOSIAH SYMON

- My experience is that experts know very little about the value of land, and that there is nothing so empirical in the world as the valuing of landed property. But in regard to the assessment of values, if I were asked to choose between arbitrators, a Judge and jury, and a Judge and assessors, I should certainly select the method adopted in the Bill, that of a Judge sitting alone. Arbitration is rightly put an end to, because with an arbitration we have an arbitrator on each side who is a partisan. The struggle

before an arbitration, is to select an umpire who will be disposed to one side rather than the other.

Senator Glassey

- No, he will split the difference.

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Senator Sir JOSIAH SYMON

- Aud as a result he may split the difference. . The inconveniences, injustices, and inequalities of arbitration have been greater perhaps in connexion with land values under the "Land Clauses Consolidation Acts and similar Acts than in any 'other direction.'

Senator- Dobson.

- What does the honor* able and learned senator think of the provision to pay 3 per cent, on debentures when they are not quite at par

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Senator- Sir JOSIAH-

SYMON. - I think it is very good for the Commonwealth. I see that 3 per cent, interest is to be paid from the date of- the notification of acquisition. It is a. low rate of interest, but that can be dealt with in committee.

Senator Sir WILLIAM' ZEAL

- I think the Government is to be complimented generally upon the Bill, because it contains many very valuable provisions which will be for the benefit of the public. There are some- points,- however, to which we shall have to direct our attention in committee. For instance, Senator Sir Josiah Symon referred to the question of arbitration. Although he has declaimed against that system, I would remind him that in Victoria, under the Lands Compensation Statute, the Crown has the right - which it exercises in every instance' - to appoint two arbitrators, as against one appointed by the other side.

Senator MCGREGOR

- Wo will make a similar provision in this Bill.

Senator Sir WILLIAM ZEAL

- I think that arbitration under such circumstances-is not the one-sided tribunal which some honorable senators would have us believe. In Victoria we have 'gone to extremes in regard to the acquisition, of land by the State. A case recently occurred- in which land was required for the purposes of a line from Lilydale to Warburton. The owners were actually despoiled of their property, and the assessors declared that the benefit conferred on them by the -building of the line was sufficient compensation for the taking of their- land.

Senator MCGREGOR

- Hear, hear !

Senator- Sir WILLIAM;

ZEAL.- I am sorry to hear my honorable friend expressing approval of such a system.- That" principle might be applied to the poor man as well as to the rich. If the -Crown acquires land for its especial benefit-

Senator MCGREGOR

- It is affording a benefit to the people.

Senator- Sir WILLIAM:

ZEAL.- If- the honorable senator had one ewe lamb, he would not' think it particularly benefited him for a person to come along and take it without' giving him compensation.

Senator MCGREGOR

- David did not consider, that:

Senator- Sir WILLIAM-

ZEAL. - We are living under very different circumstances, to those in which our friend, David, lived. This question .involves very great' issues,- and one -of the first is the principle -of betterment. For instance, I have an allotment of land through which it' is proposed to run a railway. The Crown acquire my property for- the -purpose, and cut it in two ; my immediate neighbour obtains a far greater benefit from the railway than I do, and surely he should be asked to contribute something.

Senator MCGREGOR

- Put a land tax on him !

Senator Sir WILLIAM ZEAL

- My honorable friend is getting off the track. In my opinion the question of betterment must be taken into consideration. I think we are all trying to do the best we can to help the Government to obtain property for the benefit of the State : but there are many points that should have our serious consideration, and we should not jump at conclusions too hastily. Allusion was made by Senator Sir Josiah Symon to the acquisition of land for railway purposes. No doubt in such cases some drastic system should be adopted, but the claims of the owners should receive some consideration. A man ought not to be deprived of his property for the benefit of his neighbour without receiving fair and reasonable compensation. I would point out to Senator McGregor that arbitration is not the one-sided tribunal that he appears to think it is, except that- the Crown has-- double representation. When the Crown has two voices instead of :one, it is absolutely protected against extortion. Senator Dobson touched on the question -of. payment- for the land.-. I think it is a very hard provision that1 the Crown: should take absolute possession' of a- man's land, and pay him by debentures only bearing interest' at 3 per cent. !

Senator Sir FREDERICK SARGOOD

- That provision does not relate to private vendors but only to the-State.

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Senator Sir WILLIAM ZEAL

- I am glad- to hear- 'that, because it would be a manifestly unjust way of acquiring, property from private individuals for the benefit of: the State. The Senate must" see that- no man with a small property could afford to allow his money to stand out;- at that small rate of interest. If he- received his money within a reasonable- time, he would be able to put' it to good use.- 'Victoria, like South Australia and New South Wales, has gone through various vicissitudes of circumstances in connexion with the acquisition of property,- until at last' we have got from one extreme to the other. The Government' are now able to acquire land on terms positively disadvantageous to the property owner. I do not think we should run to these extremes, because there is a proper way of dealing, not only between the Government and the private owner, but' between the Government and the community generally. If a man is dispossessed of his property, and his neighbour benefits by the action of the Government in acquiring that property, surely the neighbour should be called upon to contribute his quota towards making good the loss which the man has sustained. I do not think it' is necessary at this- stage to review the various phases of the Bill. That' is a work which can be better undertaken in committee. But I would point out that the system of1 betterment should receive fair and honest consideration. "Unless that' is done the owner of the land taken over will be put under a disability entirely for the benefit of his neighbour.

Senator Major GOULD

- I am quite sure there will be no question as to the desirability of passing., a Bill of this character, and that criticism. will be rather in regard to matters of detail than matters of principle relating to the measure. There are one or Wo matters in which this Bill differs from ordinary Bills passed to enable the Government to acquire lands for public purposes, and'. I would direct the attention of the Senate to them. I.h the first place, it is recognised that the Government should have some authority from Parliament-to go . upon before land is resumed. It is generally provided that a .vote shall be passed by Parliament to enable the acquisition of laud for a particular purpose, and when that authority has been given , the Government may step in and secure the land. Unless the Government have a- vote out of, which they can pay compensation, I do not think' it is usual for the Government to resume property. If - we do not have some safeguard of that kind' to protect- the public, the whole matter will be in the- hands of. the Government" to do as they think fit, without consulting Parliament;; and, although Parliament might condemn the resumptions afterwards, they .would have committed the Legislature, and it" would become necessary to complete the purchase. It would be well, in' committee, to make some provision to meet cases of the character' I have mentioned, and to provide that the Government' should be authorized in the first instance by a vote of Parliament to acquire land for some specific purpose. Passing on to the question of compensation, which has been alluded to by Senator Sir Josiah Symon, there is no power apparently' under clause 17 to enable the Judge to award more than the bare values of land on a particular date. It is unquestionably the feeling of the Senate, and I believe of the other House, that there should be some small percentage over the value -of- the land given to the owners in consequence of its compul'sory resumption. " Clause 17 only deals with compensation for.certain lands that maybe required and not in relation to all lands that may be resumed. It appears that the Government

have power- to resume lands for public purposes generally, and under clause 17 the proviso is that - . - Where the land is taken for the purpose of any work or undertaking, the construction or carrying out whereof has been specially authorized by an Act, the land, estate, or interest of the claimant shall not be assessed at a value exceeding the value thereof on the 1st day of January last preceeding the first day of the session of Parliament in which the, Act was passed.

Senator O'Connor

- That deals with one case. The previous clause deals with the general case. At' the end -of the first subclause it says -

And they shall assess the same according to what they find to have been the value of the land, estate, or interest of the claimant on the 1st day of January last preceding, the date of acquisition.

Then where it is a. work under an Act it is. dealt with under the second paragraph, which the honorable and learned member read.

Senator Major GOULD

- GOULD. - Practically it amounts to much the same thing in both paragraphs.

Senator O'Connor

- It only fixes a different date. In one case it is the 1st of January before the acquisition, and -in the other case it is the 1st of -January before the session in which the -Act- is passed.

Senator Dobson

- In the second line of - clause 17' it says - "in every case."

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Senator Major GOULD

- I omitted to notice that difference," so that it gets over the objection I was raising. But with regard to a further argument about its being so arbitrary to enable the Government to take the land without any notification to the individual himself, that is disposed of by a previous division in Part 2, under which the Governor-General may agree with the owners of land which is required for any public purpose. I presume that in the first instance the Government would very naturally, under a Bill such as this, approach the owner and see if an agreement could not be arrived at. It is only in the case of the owner refusing to sell, or the owner not being get-at-able, or being unknown, that the Government would resort to this power of compulsory resumption. But even there I think it would be advisable that there should be some notification beyond that which appears in the Gazette. It might be if there was a person in occupation' that that notification should be served upon him at least seven or fourteen days before the compulsory acquisition of the land.

Senator Dobson

- But before the notice can be prepared for the Gazette they must go and get particulars of the deeds and boundaries of the survey.

Senator Major GOULD

- There is no necessity to get any particulars of the deeds.

Senator Dobson

- I think so:

Senator O'Connor

- One difficulty about the honorable and learned member's suggestion is that the Government may not know who the owner is. He may be out of the Commonwealth ; that very often happens.

Senator Sir Josiah Symon

- We can except those cases.

Senator Major GOULD

- If there is any' person in ' possession" the Government can give notice, and if there is no one in possession, they can either except those cases or give notice in the newspapers circulating in the locality.

Senator O'CONNOR

- There is no objection to that.

Senator Major GOULD

- Senator Millen reminds me that the Municipal Act of New South Wales contains provisions under which authorities can deal with lands' although they cannot find the owner. That is where he is out of the State, or cannot be found. These, no doubt, will enable us to deal with a matter of this character.

Senator Glassey

- AVe have had a similar law in Queensland for a great length of time. It may be disposed of and the proceeds used.

Senator Major GOULD

- It would be easy to embody a provision in the Bill to enable the case of that kind to be met. AVe were told a little while ago that it would be necessary for the Government, before issuing a notification, to enter upon the land, but I do not see any provision to enable the Government to enter upon the land until, after the notification has been gazetted.

Senator Dobson

- It comes in the wrong place, but they can enter upon the land first, I take it.

Senator Major GOULD

- GOULD. - I do not know under what clause they can do so. So far as I .can see there is no power to enable the Government to enter upon the land, so that they would only be in a position to describe it in general terms.

Senator O'CONNOR

- There is a power in clauses 48 and 49 for ascertaining whether the land is suitable for any public purpose before it is notified.

Senator Harney

- And they shall even give compensation for doing so if necessary.

Senator Major GOULD

- I see that clause 4S provides -

All persons authorized by him may enter upon the land of any person and the. crown land of any State, and may make surveys, take levels, sink pits, and examine the soil, and do anything necessary for ascertaining whether the land is suitable for any public purpose.

Assuming for the sake of argument that the inspector examines the land, and the owner hears nothing further. There is a notification published in the Gazette, but he gets no intimation direct, and we contend that he ought to receive such an intimation.

Senator Dobson

- They can go and get the deeds and a description. The notice in the Gazette with us is a proclamation. It ought to contain an exact description of the land to be taken. The authorities cannot value it unless they have it. The notice will give an exact description and survey.

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Senator Major GOULD

- These are some of the difficulties which occurred to me, and of course it is well to mention them, so that they may be fairly considered in committee. I admit that I am running through the Bill for the first time to-day. I should also like to direct attention to clause 60, giving power to the Commonwealth to dispose of superfluous land. The question to my mind arises at once whether this power should be left entirely in the hands of the Governor-General in Council, without reference to the public in any way, or whether the land acquired and found to be unnecessary should be disposed of by public auction. I think it would be much safer to require the land to be disposed of by public auction in the event of its not being required for the purpose for which it was resumed. By that means there would be no possibility of any person turning round and saying - " This land was sold at an under value ; the Minister sold it to a friend for a certain sum without placing it on the open market." I think when we come to the clause it will be found advisable in the. first place to have the property offered for sale by public auction, and- if it does not realize the amount reserved then it should be in the hands of the Minister to dispose of privately to any person at a sum not less than that amount. By that means we would get rid of all pretence of any partiality being shown in the disposition of the land.

Senator Harney

- May it not be advantageous to lease it ?

Senator Major GOULD

- Of course the Minister would have power to lease if he saw fit. I mean to say that it should not be disposed of unless it is done by public auction, or after it has been offered at public auction and the reserved price has not been realized.

Senator Dobson

- That might be hard on the owner from whom it was compulsorily taken. .

Senator Major GOULD

- "We have taken the land from the owner and paid value determined according to law.

Senator Dobson

- It might have been bettered by the capital, and yet, we put it tip by auction and make the owner bid a high price.

Senator Major GOULD

- If it has become improved in value.

Senator Dobson

- I think the idea is if we do not want the land to give it back to him at the same price.

Senator Major GOULD

- -We shall have to make an alteration if we wish to do that. I do not object to the Government saying to the man - " We find that we do not own this property. You take it back and give us the money which we paid for it."

Senator O'Connor

- That probably would be a very rare case.

Senator McGregor

- It might have been improved in value.

Senator Major GOULD

- If it had an added value given to it I presume the owner would have to pay an increased price.

Senator O'Connor

- Generally speaking he will very probably be glad to get rid of it.

Senator Major GOULD

- With regard to the interest to be paid on the purchase money, I think 3 per cent, is too low. I notice that in the acquisition of lands for public purposes in New South .Wales the amount is 6 per cent.

Senator O'Connor

- That amount is too high.

Senator Major GOULD

- It may be too high, but certainly it should not be less than 4 or 5 per cent.

Senator Staniforth Smith

- What do the State Governments get their loans for 1

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Senator Major GOULD

- About 3-1- per cent. Surely, the individual should receive a higher rate than 3 per cent., and his property would be a very poor one if it did not realize any more than that. I am glad to find that there is a provision under which a fairly speedy assessment of value may be arrived at. Lately, in an adjoining State, there has been a great deal of complaint about lands having been resumed, and, although a period of eighteen months has elapsed since it was done, the owners are no better off than they were then, for they do not know when they will be paid. In the meantime, they are receiving neither rent nor interest, because the titles are not perfectly clear. I am glad to find that under this Bill such a case as that, so far as one can judge, will not be possible, because the High Court will be in existence very shortly, and it will deal with each case within a reasonable time. As regards whether it shall be dealt with by a Judge or by a jury, while I have a great value and appreciation of a jury, in many instances I think that a matter of this character is better left in the hands of a Judge, for, however desirous a jury may be to do what is right and just between the parties, we know that there is always a leaning towards slating Governments and big corporations in favour of the man whose property has been taken. With a Judge we hope to get a man - and I am sure we shall - who will not only be able to judge of the evidence and see how far it can be relied on, but about whose impartiality and high integrity there will be no doubt. By that means we may be sure that an owner will get reasonable value for his land. It may be that the Judge will have no personal knowledge or power within himself to determine the values.- But after all the values are to be determined not by the opinions of the jury or the Judge, but by the opinions- which are submitted by witnesses. With these witnesses- giving their evidence surely the Judge will be in as good a position, if not a better one

than a jury, to strike the balance and say what- is really right and just.

Senator Glassey

- The- Judge of the Irish land court - the greatest land court that we know of - has no specific knowledge of values, and yet his judgments are generally, fair.

Senator Harney

- In Ireland there are two assessors who are .experts- in. land values.

Senator Major GOULD

- In any case I am glad to see that this Bill has-been brought in It is in a. form -in which I am sure it will commend itself to honorable senators. There are only minor matters of detail which will require attention in committee,' but' on the broad and equitable principles of the Bill I think we may practically say we are agreed;

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Senator Sir JOHN DOWNER

- I agree with this Bill, altogether. It is a most excellent Bill both in principle and detail. It fixes an absolutely fair basis - as fair as we can with our- limited knowledge fix oh*- on which - the value of' land taken shall be assessed,' and it fixes the tribunal for the purpose -of- its assessment'. We have had 'a great many years1 experience since the Lands Clauses Consolidation Act and the Railway Clauses -Consolidation Act came into force. We have known - all about appeals to arbitration with an umpire. We have known all about Judges with assessors. We have known all about Judges and juries sitting in this matter: We have known that in arbitration . there is a partisan on each side with an umpire who may give way more or less according to the persuasive powers of- his colleagues. A" jury are selected because they do not know anything about the case and therefore they are-more impartial. But on a question which requires some sort of' appreciation of- evidence, I' think the Judge would be able to decide- more excellently without the assistance of that somewhat uncertain tribunal. Should the Judge sit with assessors? I think he is better- without them. He will have the parties1 before him, and they will bring their assessors in their proper character as witnesses, and not as portions of the. bench. If the assessors come in they will practically be in the> -position of arbitrators, and . one will . go one way, and one the other,' and will; be prejudiced more or less: I do not say that that: will materially affect, a- Judge if. the decision is left with- him. I .prefer the assessors in the witness-box- and-. the Judge on the bench.. He is accustomed in his wide experience not merely to measure men, but to estimate the value of- the evidence of assessors: I think the Bill hag been drawn with great care, will .work exceedingly well, and will prevent the Commonwealth in the acquisition :of properties, which it is necessary it should acquire for its own well-being, from being. victimized by -the eccentricities of judicial administration.

Senator O'CONNOR

(New South Wales Vice-President of' the Executive Council). - In reply; I have been very much obliged to ' several honorable senators for the points of view winch they have submitted for my consideration, but I think- when they look into the measure with a- care ful scrutiny, which I have been .obliged to give it, they will find that most of their -objections will disappear. There is one disability under which we all labour, without, perhaps; recognising, it. That is to say in each State we have been accustomed to have these particular matters dealt with in a certain way, and we probably all think that that is the best way. Until we have the matter considered, and - put before us from different points of view, perhaps that is only natural. I think that before this Bill gets out of committee, honorable senators will be satisfied with regard to any of those matters of procedure which are new, that, they have a great deal to recommend them, and that wherever there is any innovation introduced in this measure, it will find in reason and circumstances most ample justification. I do not wish to say anything in detail about the matter, except on two points. In the first place, as to the power to add the 10 per 'cent. It has been decided; not only in England,- but under a-similar statute in New South Wales, by the Supreme Court there, that this 10 per cent, is not a rule of* law at all; it has been the ordinary practice of ' Judges- to direct juries that it will be safe to add 10 per cent, for the " forced sale," as it is called; because compensation in matters of this kind should -not be weighed in golden scales; but' should be - given liberally. It is- usual to. add 10 per cent: for -forced sale in-order to make up anything which may have been1 omitted in the- estimate of value. .That rule 'will -still continue, and there will ' be nothing to prevent a Judge. adding the 10 per cent, or any amount lie may consider . fit, in order to make '.up for anything that may not have been considered in the estimate of value. After all,

there is no possibility of arriving at a mathematical rule of assessing damages. We cannot lay it down in a statute or arrive at it in practice. -It must always be more or less of an estimate, and I think it is a good principle that the estimate should not be on an illiberal scale. I see great difficulty in providing that there shall be 10 per cent, added, because there may be cases in which the forced sale has brought about no damage whatever. It may be that a man has had ample notice and abundant opportunity of selling, at a reasonable figure,

-and

he may have refused it. Under such circumstances, why should anything be given for a forced sale?

Under other circumstances it may be perfectly reasonable that something additional should be given, and I think it will be best to leave it in the hands of the authorities, who will have no interest to serve but that of justice between the Commonwealth and the individual.

Senator Harney

- If you put it into the Bill there will always be a margin added to the 10 per cent.

Senator O'CONNOR.-

There is sure to be. I do not think there is anything else I need refer to now. I hope when the Bill gets into committee to have the assistance of honorable senators. I have given very careful consideration to the Bill, which seems to me to be very well drawn, and I do not see any fault to find with it. If I am convinced by any honorable senator that it can be improved I shall always be ready to receive any suggestion.

Question resolved in the affirmative.

Bill read a second time.

In Committee.

Clause 1 agreed to.

Progress reported.

POST AND TELEGRAPH BILL

In committee

(consideration resumed from 3rd July,

vide

page 1954) : Clause 93 -

No letter shall be sent or carried for hire or reward otherwise than by post. Any person who for hire or reward - (a) sends or conveys or causes to be sent or conveyed any letter otherwise than by post; or (<) takes charge of a letter for such conveyance shall be liable for every offence to a penalty of not less than £10 nor more than £50. (2) Every letter sent or conveyed, - or caused to be sent or conveyed, or taken charge of to be conveyed otherwise than by post shall be deemed to have been sent or conveyed, or caused to be sent or conveyed, or taken charge of for hire or reward unless; the contrary is shown by the defendant. (3) Nothing herein contained shall extend to any letter - Exceeding sixteen ounces in weight; (<) Exclusively concerning goods sent and to be delivered therewith ;

-Sent by any person concerning his private affairs by any special messenger ; or

Bond

fide

sent or carried to or from the nearest post-office.

Senator CLEMONS

(Tasmania).- This Clause, as it stands, absolutely forbids any person sending any letter or message by any other person for hire or reward. On the second reading I pointed out that it seemed undesirable that the post-office should interfere with the arrangements made by a private person so as to forbid him even to pay a rate largely in excess of the postal rate if he wished to have something sent by a private messenger in an emergency. '

Senator Drake

- That is provided for in the next sub-clause. **

Senator CLEMONS

- I have not omitted to notice that. In paragraph (c) of sub-clause (3) there is a deliberate exception made in the case of a letter -

Sent by any person concerning his private affairs by any special messenger.

I submit, however, that the limitation to his " private affairs " is unnecessary, or, at any rate, that it is not desirable, to limit a person employing a messenger in an emergency to the sending of letters solely of a private nature. I point out also that it would not be easy to ascertain whether a message dealing only with a man's private affairs was being delivered in a closed envelope by a private messenger. I ask the Postmaster-General, if he is not-desirous of an absolutely exclusive monopoly, to alter paragraph (c) by omitting the words " concerning his private affairs." -

Senator Drake

- That would not do, as any one. might send anything by special messenger. He might send a mail.

Senator CLEMONS

- Provided always that he pays some rate largely in excess of the rate paid by the post-office.

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Postmaster-General

Senator DRAKE

. - There has never been the slightest difficulty so far as I am aware, in connexion with the working of this clause. The intention is very clear, and it is always carried out. That is to say, no one must make a business of carrying letters, because once the monopoly of the post-office is broken in upon by persons carrying private letters in competition with the post-office, the whole thing crumbles away and we cannot perform the services we hope to be able to perform for the Commonwealth. The exceptions are put in here in order that the postal authorities may raise no objection in cases where a man is bona fide for some purpose or other, sending his own message on his own business, but it must not be done in such a way as to interfere with the postal monopoly.

Senator CLEMONS

- I remind the honorable and learned senator that he started off by saying that the post-office makes no exceptions, and in the Bill of which he has charge, he immediately proceeds to make exceptions. My objection is that the exception is not taken widely enough, and that the limitation " concerning his private affairs " in paragraph (c) is too narrow. I submit that there would be no attempt made to take advantage of the Post-office, and as the paragraph stands the Postmaster-General will be very seriously interfering in a way which, I take it, he would not himself recommend, with the liberties of individuals who might, in emergency, want to send something by private messenger that did not necessarily concern their own private affairs.

Senator DRAKE

- It must be seen very clearly that if we alter the paragraph in the way suggested, we shall be opening the door to any amount of competition with the post office. Because then the clause will provide that any person - and that is wide enough - may send anything by a special messenger. Under such a provision, any person could send a mail without any restriction whatever. He could employ " Thomas ' Jones " as a special messenger, and send him down Bourke-street delivering letters to any extent for hire and reward.

Senator Clemons

- It might be that such a thing would be desirable.

Senator Sir FREDERICK SARGOOD

- I hardly think Senator Clemons can see the full force of the amendment he suggests. There is no question that the Postmaster-General is absolutely correct in the stand he has taken. If the amendment were made we would instantly have companies started for the delivery of all letters, and instead of a fee of twopence, we would get private parties to deliver letters for a halfpenny.

Senator Clemons

- Not if such a private company competes at much higher rates than the post-office.

Senator Sir FREDERICK SARGOOD

- We could not prove that. I think the honorable senator is clearly wrong in his proposal. As a mercantile man I may say it would pay splendidly to employ the services of such a private company if the post-office would allow it.

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Senator HARNEY

- It is quite clear that if the committee strike out the words " concerning his private affairs " the clause will open the door to the starting of a regular business in opposition to the post-office. But at the same time

there would at first sight appear to be something in the contention of Senator Clemons, as to who is to judge what are a person's private affairs. But the answer has immediately suggested itself to me that this is a provision dealing with the imposition of a penalty, and when a person is sued for the penalty on account of a letter alleged to have been sent contrary to the Act, his answer would be to produce the letter itself. Therefore there is no difficulty about the point. I had a curious experience in Western Australia, from the Act of which State this clause is taken. A man named Kenny, a Member of Parliament, was visiting the Murchison gold-fields where a wealthy speculator named Darlington Simpson had some interests. Simpson found it necessary to send a telegram to Nannine. The message involved a considerable sum of money to Simpson, and he said to Kenny, "If you will take the letter I will give you shares to the value of £1,000 or £500 'in cash.'" Kenny brought the letter and then claimed the £500 from Simpson. Simpson said he would not pay. The matter came to law, and I had a brief for Darlington Simpson. The point we raised - it was not found to be effective - was that under this section it was an illegal act for Kenny to carry the letter, and that no cause of action could arise. The jury, however, were of the opposite way of thinking. But there was a case that I certainly think was hard. Simpson was in a place where there was no telegraph station at hand, and he was debarred from sending a letter under the law of Western Australia. It was not a letter on private affairs, or concerning his business interests merely.

Senator Glassey

- It was on profitable affairs.

Senator HARNEY

- The letter really asked a public body in Nannine to pass a resolution in reference to the notation of the company which was to be transmitted to London. It was held, however, that it was not a letter concerning Simpson's private affairs. That was a case of hardship such as would arise very rarely. Looking at the matter fairly, I think it is necessary that there should be such a clause in the Bill. The mere fact of a letter being closed does not create any difficulty ; because if a person is found carrying a letter he can be summoned, and will have a complete answer by producing the letter in court, when the justice of the peace will be able to see whether the letter is substantially on the sender's private affairs or not.

Senator WALKER

- If a person puts a postage stamp upon a letter and entrusts it for delivery to another person, would the putting on of the stamp get over the difficulty 1 I have a distinct recollection that in Scotland when I was a boy I used to have to go several miles by coach to school in Edinburgh. Sometimes my father gave me a letter for delivery to the coach driver. My father used to put stamps on the letter, but' he usually gave the coach-driver 6d. in addition, and used to say that so long as you put the necessary postage stamps upon the letter you could legally ask a person to deliver it. I suppose that if that were done it would still be perfectly right.

Senator DRAKE

- I do not think such a case as Senator Walker mentions is provided for, but there would be no question raised if postage stamps were put upon the letter. The sole object of the provision is that letters are not to be carried at a profit by private individuals.

Senator Sir FREDERICK

SARGOOD ('Victoria). - It appears to me that the statement just made by the Postmaster-General is the key to the position. The object is to prevent the revenue being defrauded. If we say that no unstamped letter shall be sent we meet the whole case. If the letter be stamped the, post-office gets the revenue.

Senator Drake

- But the stamp might be insufficient.

Senator Sir FREDERICK SARGOOD

- Then we might say that the person shall put "sufficient" stamps on.

Senator Millen

- If the stamps were not obliterated they could be used over and over again.

Senator HIGGS

- I wish to suggest that if we are to proceed at our present rate we shall get through this Bill some time next year. I suggest to the committee that the matter under discussion is not of grave importance, and that there is no need for senators to follow each other in the debate and repeat arguments that others have used.

Senator HARNEY

(Western Australia). - I suggest to the Postmaster-General that it would not be wise -to alter the clause so as to make it refer to letters that are stamped ; because that would open the door to doing away with control by the Postal department. Take the case of Tattersall's sweeps or of the sending of offensive or libellous matter. Any person wishing to circulate such communications could do so by putting stamps on the letters, and then delivering them by hand.

Senator Drake

- And the stamps could be used over and over again.

Senator MCGREGOR

- I agree with what Senator Higgs has said, that there is no need for a long discussion on this clause.

Senator Sir Frederick Sargood

- The committee yesterday spent eight hours in discussing amendments on two clauses. Most of the amendments came from the corner in which Senator McGregor sits.

Senator MCGREGOR

- As to the suggestion, of Senator Sir Frederick Sargood in regard to letters stamped or unstamped, I would ask : What is the difference so far as the post-office is concerned ? Who is to cancel the stamps ?

Senator Sir Frederick Sargood

- I see that that would not do.

Senator MCGREGOR

- The Postmaster-General wants to protect himself against people who desire to defraud the department. Senator Walker has said that his father used to give a man 6d. to carry a letter in addition to putting stamps on it. If that be so, Senator Walker's father could not have been Scotch ! It is a libel on my country !

Senator STEWART

- It appears to me that this clause is worthy of discussion. So far as I am aware it is an innovation. Evidently it is taken from the Western Australian Act.

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Senator Drake

- It is in every Postal Act.

Senator Stewart Does not the Postmaster-General know. that in Great Britain a business man may have his business circulars delivered by hand 1

Senator DRAKE

-That is provided for in this Bill. A man can send his own business circulars by special messenger, but he must not make a profit out of it. The exceptions will be found on page 27 of the Bill. There is a similar provision in every Postal Act.

Senator Harney

- This provision is copied from the "Western Australian Act, so it is all right.

Senator STEWART

- -That is a reason for being suspicious of it. Any community that has tolerated "Sir John Forrest for ten years is not one of which I have a high opinion.

Clause agreed to.

Clause 94 agreed to.

Clause 95 -

Unlawful possession of moulds for making postage stamp or postal note paper.

Senator Sir FREDERICK SARGOOD

- I must call attention to what I think is an omission from this Bill, and that is a right of appeal. While there are pages of penalties, some of them pretty heavy - for instance, we have one provision that a man may be imprisoned for two years - no right of appeal is provided for anywhere.

Senator -Drake.

- That will be provided for generally in some judicial Bill.

Senator Playford

- A man can appeal against all these penalties, I think.

Senator Sir JOSIAH SYMON

- This point was called attention to by Senator Sir Frederick Sargood some time ago. It was then pointed out that clause 146 deals with summary conviction for offences against this measure. Of course this is a clause under which proceedings will have to be taken, and there can be no proceedings before a court of summary jurisdiction until we have arrangements made for summary procedure. A Bill for that purpose would provide for appeals as well as for the original conviction.

Senator Sir FREDERICK

SARGOOD (Victoria). - 'Suppose the Bill making the arrangements referred to is not passed for. months, what is to be the position of the poor unfortunate man who is, say, sentenced to be imprisoned for two years ? He cannot appeal. I do : not know what the practice is in the other States, but in Victoria I think I may safely say that every

Act for imposing penalties provides for an appeal.

Senator DRAKE

- If there is-.any method for trying the offender there -will also be provision for an appeal.

Senator Sir JOSIAH

SYMON (South Australia). - Provision could not be made for appeal until- there was procedure for summary conviction. The Bill is defective in 'that respect; but it is - better - to have a separate Act - prescribing the mode of summary* procedure before a magistrate.

Senator- Sir 'Frederick

Sargood. - Then you could not sentence a man- to two years' imprisonment under this Bill?

Senator Sir JOSIAH SYMON

- No; the Bill only creates offences and provides penalties.

Senator Sir Frederick Sargood

- That is an answer to my objection.

Clause agreed to. Clauses' 96 to 102 agreed to. Clause 103-

Any postmaster or other officer or servant employed in the department, or any master of. a vessel or other person employed or authorized by or under any postmaster to -receive, sort, carry or 'deliver .any mail or any postal article sent by post or otherwise who shall offend against or wilfully neglect or omit to comply with any of the, arrangements or regulations to be made as in this Act mentioned or with any of the provisions of this Act (for breach or neglect of which, no other punishment is hereby provided) shall be liable to a penalty not exceeding One hundred pounds or imprisonment for 'any term not exceeding two years.

Senator MILLEN

- I would direct the attention of the committee to a very drastic provision in this clause. It provides that any servant of the department, or any master of a vessel, or other person employed or authorized by or under any postmaster to receive,' sort, carry, or deliver any mail or any postal article sent by post or otherwise, who is . guilty of any neglect of duty, shall be liable to a fine of £100, or imprisonment for any term not exceeding two years. I think that is a very excessive penalty. Why should an officer of the Postal department be liable to a more serious punishment for neglect of duty than an officer in any other department is]

Senator Glassey

- The provision is taken from the New South Wales Act.

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Senator MILLEN

- I am not going to guarantee everything that comes from New South Wales; I have been trying to fight for a long time against certain established institutions there. I think the penalty provided in this case should be reduced.

Senator DRAKE

- The fine of £100 is the maximum penalty. It is necessary to protect the public in connexion with the postal business, and it is easy to imagine very serious breaches of duty on the part of a postmaster. Supposing such an officer wilfully neglected to send a mail forward, that would involve enormous inconvenience. In such a case we could not let a man off with merely a nominal fine.

Senator Millen

- Does not a public officer in any department inconvenience the public by neglect of duty?

Senator DRAKE

- Perhaps so, but let the other departments look after themselves. In order to carry out the postal business so as to insure the public receiving the full benefit of the service, we must be particularly strict in our dealings with postmasters and other officers in regard to the performance of their duties. They are charged with the safe transit and delivery of mails, and we ought to take proper precautions to insure their work being carried out properly.

Senator Sir FREDERICK

SARGOOD (Victoria). - The position taken up by the Postmaster-General would be perfectly right if this clause simply applied to masters of vessels and other persons outside the service doing work for the department. To-morrow, however, in all probability, we shall have the Public Service Bill before us. That measure deals with the public service as a whole, including officers of the Postal department, and it provides that any offence committed by a public servant shall be dealt with in a certain way, and punishment meted out by the commissioner, under regulations, according to the degree of the offence. This clause in the Postal Bill, however, takes from the Public Service Bill certain classes of public officers, and subjects them to very heavy fines and imprisonment at the will of the Minister in charge of the department.

Senator Glassey

- No; I will give the honorable senator a case in point presently, showing the necessity for this clause.

Senator Sir FREDERICK SARGOOD

-I do not want a case in point. This clause is taken from the New South Wales Act. There is no such section in the Victorian Act, because in this State we have had since 1884 a Public Service Act, under which all offences by officers under the Government can be dealt with. When the Public Service Bill reaches us we shall find that this clause clashes with its provisions.

Senator HARNEY

- I agree with Senator Millen. Not only is this a very drastic clause, but if we turn to clause 146, we shall find that power is given to justices to inflict this very severe punishment for visionary offences. Clause 146 provides -

Offences against this Act or the regulations not declared to be indictable offences are punishable upon summary conviction.

Therefore, an ordinary justice of the peace has power to say whether an officer of this department has wilfully neglected his duty. What is the degree of omission? That is certainly a nice question to be dealt with by a tribunal well used to measuring evidence rather than by justices. The Bill provides for a number of breaches of duty, and in nearly every case that has occurred to the draftsman he has dealt with them specially.

Senator Millen

- It is a whole criminal code.

Senator HARNEY

- Yes. Here we have this special clause empowering justices to imprison a man for two years, or to fine him £100, for committing not some ascertained and definite offence which could be proved and clearly comprehended by a magistrate, but some offence which is not to be found in the Act, and the heinousness of which must be entirely dependent on the idiosyncrasies of the magistrate.

Senator GLASSEY

- I have never been in favour of very severe penalties, and I am not clear that this clause is not going too far. In reply to Senator Sir Frederick Sargood, however, I would point out that the Public Service Bill does not bring within its scope certain persons who deal with postal matters. In Queensland, for instance, nearly every station-master and station-mistress in districts removed from large centres of population deal with postal matters.

Senator Sir Frederick Sargood

- I did not refer to them. I referred only to officers under the Public Service Act.

Senator GLASSEY

- The persons to whom I allude hold dual positions.

Senator Sir Frederick Sargood

- Railway employes are exempt from the Public Service Bill:

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Senator GLASSEY

- That shows the weakness of the Bill, and that the Postmaster-General should have larger powers to deal with such persons. A station-master in charge of an office in a district which I once represented in Queensland committed a most serious offence. The station was some 23 miles distant from Brisbane, and the station-master had to deal with postal matters. He collected letters from the inhabitants, and when he ran short of stamps and was expecting them by the next train the people gave him their letters, together with the money to pay for postage. Ultimately this man appropriated certain moneys, and then it was discovered that behind a desk to which the public had not access a large bundle of letters had been concealed. They comprised the letters which the station-master had received, together with money to pay for the stamps. He had simply appropriated the money and hidden the letters.

Senator Playford

- The criminal law would catch that man.

Senator GLASSEY

- I am only pointing out that such a case ought to be severely dealt with. I remember travelling in an emigrant ship in which an officer received money to pay for the postage of letters, but failed to post one of them.

Senator Harney

- That is a common law offence ; it is an ordinary theft or embezzlement.

Senator GLASSEY

- I am aware of that. I only desire to show that there are exceptional cases for which we should provide in this clause. Notwithstanding these extreme cases, however, I think the penalty set forth in this clause is rather severe.

Senator MILLEN

(New South Wales). I think the penalty of £100 should be reduced to £25. I move -
That the words " One hundred," line 12, be omitted.

Senator HARNEY

(Western Australia). - I would respectfully impress upon the Postmaster-General, who evidently has taken this clause from the New South Wales Act, that he should consult his own legal knowledge. The objection to the clause is not so much in regard to the amount of the punishment, but the fact that it is to be left entirely to the discretion of justices of the peace. If the offence is one that ordinarily arises under the postal service, we have it dealt with throughout this Act. If it is an offence criminally, such as those referred to by

Senator Glassey,

the common law meets it. Therefore, this clause provides that for a breach or neglect of duty which is not provided for as an offence in any other way, a man may get two years' imprisonment. A man may receive two years' imprisonment for an offence which no other principle of the common law would render penal, and which, consequently, is so remote and visionary that it is not even specifically provided for. I think this is a 'shocking drag-net.

Senator Drake

- The words "hereby provided " are used in the clause.

Senator HARNEY

- " For breach or neglect of which no other punishment is hereby provided." It must refer to matters for which no other punishment is provided. How could it be suggested that a man should receive two years' imprisonment for stealing from the postal service, when he might get five years' imprisonment, 'for stealing from some other department ? When you say the offence is not hereby provided, you must mean an offence other than such as is provided for by the general code, and outside those dealt with by the Bill. Therefore, in effect, it is said in the clause, "we will give a justice of the peace power to inflict two years' imprisonment for an offence which is not contrary to the ordinary criminal law, and which is not contrary to the special requirements necessary to carry out this Act, but which is merely neglect." I would suggest .that the whole clause be struck out ; and I would say to the Postmaster-General that it is very easy for him, and others like him, to think out another means of dealing with the particular class of persons they have in their minds. They should be dealt with in a special clause so that we might know what we are

about.

Senator DRAKE

- I have given one indication of the class of omissions of duty which the clause is intended to meet, and there may be other instances. I have given the case of a postmaster who received a mail which it was his duty to forward and who wilfully neglected to do so. We know that if he steals something we can get at him under another clause, but I contend that a breach of 'duty of that kind is such as certainly we should take some means to punish.

Senator Harney

- Deal with it in a special clause.

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Senator DRAKE

- Here is the special clause - (

Wilfully neglect or omit to comply with any of the arrangements or regulations.

It is impossible in this or any clause to minutely detail all the possible breaches of regulations which a postmaster or any other person engaged in transmitting mails can commit.

Senator Harney

- It says that a person can get two years.

Senator DRAKE

- With regard to the fines which may be made by regulation - those fines which it was suggested should be limited to £5, and which in State Acts have been restricted to that amount - for small breaches of discipline in the office. If we omit the clause we shall have no means of keeping control over postmasters and persons who are engaged in transmitting mails, and punishing them if they wilfully neglect their duty, thereby causing an enormous inconvenience to the public. It is said that £100 is too large a fine. It is about one of the most difficult things I suppose which can possibly be decided, for the simple reason that until we know the particular neglect of duty is in a case, we do not know what penalty will meet it. The ordinary fines are fixed by the Governor in Council, and probably either the Postmaster-General or a deputy would have the power of inflicting them without any form of trial. The Bill provides in this case that before any penalty can be inflicted, the man must be tried, no doubt by a police magistrate or by justices.

Senator Fraser

- Surely that is safe enough.

Senator DRAKE

- I should think it is safe enough.

Senator Millen

- I do not know that it does provide that before the fine is paid he must be tried by justices of the peace.

Senator DRAKE

- Clause 146 provides that.

Senator Millen

- It does not do anything of the kind. It merely says -

Offences against this Act or the regulations not declared to be indictable offences are punishable upon summary conviction.

Probably there will be some regulations by which the Minister can levy fines in the department.

Senator DRAKE

- That is on officers only within the department.

Senator Millen

- The Minister may claim to levy on an officer a fine from £3 up to £100."

Senator DRAKE

- Certainly not. The general provision in regard to infliction of fines in the department is that the matter is to be fixed by regulation made by the Governor-General, so that under that power the Minister could not possibly fine up to £100 under this clause; it gives no power whatever to the Postmaster-General or a deputy to fine. Before any one could be fined under this clause he would have to be tried either before a stipendiary magistrate or two justices of the peace.

Senator Sir Frederick Sargood

- It does not say on conviction.

Senator DRAKE

- Clause 146 provides that after the trial.

Senator- Harney.

- Surely the Minister can fine a person who stops the mails, and not make it a general thing?

Senator DRAKE

- Why should not any person who is in the service of the department, or whose duty it is to carry mails, be liable to a fine ?

Senator Harney

- Exactly, and define that as the person referred to. Put in a special clause dealing with him.

Senator DRAKE

- The clause describes the class of persons who will be liable to this penalty, and they are all persons who will have the handling of mails or the transmission of them.

The CHAIRMAN

- I am desirous of allowing the utmost latitude, but I must ask honorable senators to refrain from interjecting so frequently.

Senator DRAKE

- I do not think that this amount is too high for the limit, seeing that a man would have to be tried before a stipendiary magistrate or two justices of the peace.

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Senator PLAYFORD

- I have listened with a great deal of attention and a perfectly open mind, and have come to the conclusion that the clause is not wanted. It seeks to impose a penalty on postmasters and others for a breach of duty. In another place there is a Bill passing for the purpose of treating all persons who are employed by the Commonwealth and making proper regulations to provide sufficient punishment for any breach of official duty, therefore we do not want in this Bill a special clause referring to breaches of duty. Take the extreme case which the Minister mentioned - the case of an officer who wilfully detains a mail. Will any one say that there will not be a provision in the Public Service Bill to deal with that case, and to mete out to the officer punishment either summary or otherwise. Of course there will be. The Public Service Act will meet all possible cases. Therefore the cases of postal officers will be met by that Act.

Senator Keating

- Would that cover the master of a vessel carrying a mail 1

Senator PLAYFORD

- No, I am limiting my remarks to postal officers.

Senator Keating

- This covers the whole lot.

Senator PLAYFORD

- The two cases which have been mentioned by . Senator Glassey would not come under this Bill. They are provided for by the common law. If a man steals any article, he may be put in prison under the common law, and we do not want a special Act to deal with him.

Senator Glassey

- They not only stole money, but they stole mails.

Senator PLAYFORD

- If any part of this clause is required, it is only that which refers to masters of vessels, or any persons employed outside the department.

Senator Sir Frederick SARGOOD

- Put in a proviso that it shall not apply to officers in the public service.

Senator PLAYFORD

- If we omit the first part, then where is the clause 1

Senator Drake

- There are some postmasters who are not officers of the public service. .Senator PLAYFORD.- I admit that there are a few. The clause had better be drafted to. apply to persons outside the public service, and certainly not to those whose cases will be met by the Public Service Act.

Senator DRAKE

- It' is very inconvenient for us to be discussing this Bill with reference to some other Bill which we have not discussed. Senator Playford is incorrect in saying that a Bill, which has not come forward, Deals with all classes of public servants. It does not, because all railway officials are exempted.

Senator Millen

- They are not federal public servants.

Senator Glassey

- But they deal with the mails.

Senator DRAKE

- A number of them are subject to the Postal department, and of course we do not know in what form that Bill may leave this Chamber. In another State, at all events, a very great number of the servants in the Postal department are expressly exempted from the provisions of the Public Service Bill. So we do not know, until we come to discuss that Bill, whether it will not be found advisable to exempt at all events some classes of servants in the post-office. I feel perfectly sure, without having gone thoroughly into that Bill, we shall find, when it does come down, that it will not sufficiently provide for the control and discipline of the Postal department. Therefore, it may perhaps- be of advantage to exempt postal officials from the operation of that Bill ; but certainly it has not come to us yet, and I think we should not discuss it.

The CHAIRMAN

- It is most irregular to mention the Bill, and I hope that the Postmaster-General will remember that it is.

Senator DRAKE

- I think we should not discuss that Bill and shape this Bill with reference to that one. For the proper management of the post-office and for the protection of the public it is necessary that some provision of this kind should be made, and seeing that we do not know whether it will be provided anywhere else, I think it should be done here. We know perfectly well that no possible Bill of that nature can deal with the matter that is dealt with in this clause.

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Senator FRASER

- I am so exceedingly anxious that we should get on that I have refrained from speaking. We must give power to the Postal department to deal with those who wilfully neglect their duty. The whole public are interested in the matter, and it is for us to give reasonable power to see that the Act is carried out properly. This clause is designed to meet a case of wilful neglect. Although it gives power to fine up to £100, it may be a fine of 100 shillings or one shilling ; and although it gives power to imprison for two years, it may be a term of two hours. Honorable senators are talking as if the maximum fine or imprisonment were going to be exercised in every case. There are many persons outside the service who deal with postal matters, and it is only right that the Minister should be given the power to control them. It might be very disastrous indeed if we did not give him that power.

Senator Sir JOSIAH

SYMON (South Australia.) - Like

Senator Playford,

I have been listening to the discussion with a very open mind. It seems to me that it is desirable that some provision of this sort should be introduced; but the defect of it is in imposing an alternative punishment of two years' imprisonment, and that that should be inflicted at the option of a police magistrate or any magistrate who may be authorized under the Summary Procedure Act.

Senator Fraser

- He will be a Judge, I presume

Senator Sir JOSIAH SYMON

- No. This is a punishment on summary conviction under clause 146. It is a most monstrous thing - an unprecedented thing, I think - to put it into the power of any magistrate to send a man to goal for two years. I do not know of any precedent for it in any legislation anywhere. A term of six months or something like that is enough.

Senator Keating

- This is taken from the New South Wales Statute.

Senator Sir JOSIAH SYMON

- I do not know if it is accurately taken, because some of these clauses which profess to be so taken are

only adaptations.

Senator Lt Col Neild

- That is not the law in New South Wales.

Senator Sir JOSIAH SYMON

- If it does exist in the law of New South Wales, think that we ought not to put it into the power of a police magistrate to send a man to goal for two years. Of course we all talk about the palladium of liberty and trial by jury, but I know of no example where a magistrate on summary conviction is able to send a man to goal for two years, and for an extremely undefined offence.

Senator Sir John Downer

- To be afterwards defined by regulations which we do not make

Senator Sir JOSIAH SYMON

- Yes. Take this clause. A breach of duty is a serious, but it is not a criminal offence. A man may be guilty of manslaughter from a breach of duty, and it may involve culpable negligence, but in respect to a charge of that kind he is tried by his peers - a jury I think the Minister will be well advised if he adopts the suggestion either of having the clause re-drafted, or of striking out the provision which would enable him to send a man to goal for two years for a mere breach of duty.

Senator Lt Col NEILD

- It has been stated here that it is possible in New South Wales for a magistrate to sentence an accused person to two years' gaol. Such a provision does not exist in New South Wales. Six months is the maximum. I have never heard of such a proposition as this - that a man should be sent to gaol for two years by an ill-informed magistrate for an indefinite offence which does not exist at present. We are asked to manufacture a penalty for a crime that some one else is subsequently to manufacture. I rise simply to say that I cannot allow it to go forward that the law in New South Wales permits magistrates to sentence people to two years' gaol. Even if it were the law in New South Wales, it is not the law elsewhere, and we are now making laws not to be administered according to the whims of any one State, but according to the laws of the whole of the States. In other words, we are asked by this proposition to extend the jurisdiction and powers of magistrates in the different States,, and that we have not the power to do. The Commonwealth does not appoint those magistrates. They are appointed by the Governments of the different States, and we cannot by passing this Bill . extend their jurisdiction and power from a sentence of six months to a sentence of 24 months. I suggest that the clause should be postponed, for the present at least, and re-drafted in the light of the legal information which has been supplied, and which evidently was not before the heads of the different postal branches who have compiled this measure.

Senator ERASER

(Victoria). - I point out that it is possible that a man may steal £50 worth of stamps. I have no objection to reduce the period of imprisonment, but it appears to me that that would be rather a serious offence.

Senator Harney

- He might get ' ten years for that under the criminal law.

Senator FRASER

- To provide that a magistrate could only inflict a much lower fine than the offence deserves would be ridiculous. It must not be forgotten that £100 is the maximum penalty provided by the clause.

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Senator PULSFORD

- I only rise to point out that the next clause, 104, deals with the case of the detention of mails, which is referred to specifically as an offence in clause 103.

Senator MILLEN

(New South Wales). I point out that the very thing which it is proposed to deal with under clause 103 by a fine of £100 is dealt with under clause 104 by a fine of £25, and without any provision for an alternative of imprisonment. . A person who detains the mails, to the public inconvenience, may be dealt with under clause 104 by a fine of £25. I ask the Postmaster-General, therefore, to accept my amendment, and make the fine under this clause for that offence £25.

Senator DRAKE

- That only applies to persons employed by the department, while clause 103 refers to a great number of others. I merely gave that illustration as one instance, without reference to other cases, of wilful neglect of

duty. I would like to put myself right with regard to the section in the New South Wales Act from which clause 103 is taken. I may say that the maximum penalty there is £100, and the only difference is that there is no provision for imprisonment. This is the section appearing in the New South Wales Act - Any postmaster or other officer or servant employed in the department or any master of a vessel or other person employed or authorized by or under any postmaster to receive sort carry or deliver any mail or any postal article sent by post or otherwise who shall offend against or wilfully neglect or omit to comply with any of the arrangements or regulations to be made as in this Act hereinbefore mentioned or with any of the provisions of this Act (for breach or neglect of which no other punishment is hereby provided) shall be liable on conviction to a penalty not exceeding £100.

Senator Millen

- " On conviction."

Senator DRAKE

- Well, a man would only be punished after conviction, I should think.

Senator KEATING

- I have listened with a great deal of interest to the emphatic protest of our friends from New South Wales against the provision in this clause for a maximum penalty of £100.

Senator Lt Col Neild

- The two years is what I objected to.

Senator KEATING

- I have listened to the emphatic protest made by those gentlemen to the maximum penalty of £100, and also to their protest against the inclusion of the maximum alternative of two years' imprisonment. Before the Postmaster-General quoted the section from the New South Wales Act, I had myself read it in that Act, which has been in operation in New South Wales for 34 years. I find that the terms of that section are practically the same as those embodied in the clause under discussion, except that there is no provision for the alternative penalty of imprisonment.

Senator Neild

- That is what we objected to.

Senator KEATING

- My- friends are shifting their ground as rapidly as they can, now that they find that, if they are to be logical in their protest, they should be able to show some disposition on their part during the time they had some political sway in the mother State to amend the law of that State in that direction. I find, however, that it has remained in the same state for the last 34 years.

Senator Millen

- Are there no laws in Tasmania with which the honorable senator does not agree 1

Senator KEATING

- There are; but if I had had a political position in Tasmania I do not think I would have come here to register a strong protest against any particular statutory provision which had remained unaltered during the time I occupied such a political position. If the Postmaster-General had chosen to read further, he might have read section 65 of the New South Wales Postal Act, and senators would have found it practically the same as clause 104, so that the mare's nest discovered by my honorable friend, Senator Millen, is one which he was evidently acquainted with during his political career in another place. I support the clause before the committee as it stands.

Senator MILLEN

(New South Wales).I think

Senator Keating

has supplied a strong additional argument against the retention of this clause. He invites us to go back for 34 years, over a generation, to shape our laws by the provisions adopted at that time. If there is one tendency which law-making has developed of late years it is to make punishments less severe. If we are to go back 34 years for an example, why not go back 100- years, when shop-lifting was a capital offence

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I can quite understand such suggestions coming from a Toryism willing to take examples from the musty past, but we want something more in keeping with the liberal tendencies of the day. If the argument used by

Senator Keating

is an argument at all, it is one distinctly against the retention of the clause.

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Senator McGREGOR

- I object to this kind of chastisement upon every one who calls the attention of honorable senators to their want of knowledge. Clause 103 has been taken from the New South Wales Postal Act, and that was denied by representatives of New South Wales. If they did not absolutely deny it, they seriously questioned and discredited the statement. In a progressive age like the twentieth century, a great many contingencies may arise out of the improvements and progress which may be made within the next five years.

Though this law may have had 34 years of existence in New South Wales, I have never heard of any very serious results arising from it. That, I think, is only an argument why we should still continue its operation. If, during an existence of 34 years, honorable senators from New South Wales have not had occasion to find fault with it, it has proved that it has been a very good child, and if they have never got into trouble under it, that is creditable to themselves. Seeing what has been explained by the Postmaster-General, and the contingencies which may arise in the future, the best thing we can do is to adopt the clause as it stands.

Senator CHARLESTON

- If asked to vote, I shall record my vote against the clause, which is altogether too sweeping. Any servant employed may come under the penalty if he fails "to comply with any of the arrangements" to be made under the Bill. What are the "arrangements"? That term may cover a very slight offence against the regulations made under this Bill. I think the Postmaster-General, in copying this from the New South Wales Act, did not take into consideration the sweeping character of the "clause. I shall have no hesitation in voting against it, so that the Postmaster-General may have an opportunity to draft another clause which will be less drastic. I think clause 104 will meet all that is required by the Postmaster-General from the clause at present under discussion.

Senator Sir JOHN DOWNER

- The whole tendency of our laws between master and servant is to give them a more contractual relation, and to release servants from the responsibilities arising out of the old principle of servitude they were liable to. In this matter, it is absolutely astonishing to me to hear honorable senators, who are particularly the advocates of servants, try to make one rule for the State and another for private service. I would say this to my friend, Senator McGregor, whom I immensely esteem; supposing I came down here and submitted a solemn contract I wished to enter into with persons who were to serve me, and I proposed that they should be liable under certain circumstances to a penalty of £100 or two years' imprisonment what a howl we should have.

Senator McGregor

- That is a different thing altogether.

Senator Sir JOHN DOWNER

- Of course it is. One would be a contract with a private individual and the other with the Government. I like to see duty performed equally well all round. In all our statutes we endeavour to define offences where they are definable, and when legislating criminally in respect of them we avoid as much as possible legislation by reference, except in subsidiary matters, and then to a very small extent. We follow that practice in our various Acts regulating public bodies. There have to be a number of incidental services performed by these public bodies in the course of their duties, and it is necessary that penalties should be imposed with respect to their infringement. But the penalties are always small, both in respect to money fines and terms of imprisonment. Here, however, we have added a crime we know not of, arising out of circumstances which some one else is to define. Regulations are to be made by the Postmaster-General to define something the infringement of which will make liable the person who has neglected his duty in these particulars. It is not an act of commission, but of omission, for which the person is to be liable for a fine of £100 or two years' imprisonment. This is not a part of the question. It concerns every one of us, and we ought to be able to talk fairly and frankly about it without its being considered that the position of the Government is affected by the criticism. What is this £100 penalty wanted for? What is the offence? It is something to be defined hereafter.

Senator Fraser

- The offence might be committed four or five times over, and should we not provide for an increase of the penalty for each offence 1

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Senator Sir JOHN DOWNER

- The Bill does not provide for that. But when we come to the next clause we find that a much more distinct offence is punishable by a quarter of the penalty. I object to such heavy penalties for the punishment of offences which are to arise under regulations that are to be made in the future. The vote I shall give will be in favour of reducing the £100 penalty, and striking out the provision with regard to the two years' imprisonment altogether.

Senator Lt.-Col.

NEILD (New South Wales). - I rise simply to answer the remark which has been made by

Senator Keating,

to the effect that this clause is a transcript of the New South Wales law.

Senator Keating

himself read the section of the New South Wales Act, and by so doing showed that it was not identical with this clause. The penalty of imprisonment is not in the New South Wales Act.

Senator Keating

- I distinctly said so.

Senator Lt Col NEILD

- It is time we paid less attention than we otherwise should have been disposed to do to marginal notes, which are inserted in Bills no doubt with a bona fide object, but with the effect of misleading. I did not remember any penalty of this kind being in the New South Wales Act. How could any man remember all the penalties in all the Acts of New South Wales? But I said, and still say, that a New South Wales magistrate cannot sentence any man to two years' imprisonment. The maximum term of imprisonment which a New South Wales magistrate can impose is six months. I entirely agree with the reduction of the penalty imposed by this clause. If a £25 penalty is sufficient under clause 104, and a £10 penalty is sufficient for the kind of legal circus we find in clause 105, we do not want a £100 penalty under clause 103. I shall vote to reduce the penalty, and shall certainly support the omission of the two years' imprisonment.

Senator Sir JOSIAH

SYMON (South Australia). - I would suggest to the Postmaster-General the advisability of adopting the suggestion of

Senator Playford,

and postponing this clause, with a view to its being re-drafted. Otherwise it is likely that not only will the amount of the penalty be reduced, but the provision as to imprisonment will be eliminated by the committee. The early part of this clause is exceedingly vague. It says -

Omit to comply with any of the arrangements or regulations to be made as in this Act mentioned.

No man should be put on his trial under such a provision as that, even to the extent of a £5 penalty. It is impossible for any man to know what risks he is running. A man is supposed to know the law of the land, but he is not supposed to know all the "arrangements made" under a measure. ' Therefore, with a desire to make the measure as perfect as possible, and to facilitate the performance of the functions of the Postmaster-General, I suggest the postponement of the clause with a view to its re-drafting.

Senator DRAKE

- If we could manage it, it would be better to deal with the clause now. It has been discussed for an hour and a half. I. am willing to let the provision as to imprisonment be omitted.

Senator Sir Josiah Symon

- Would the Minister agree to strike out the word " arrangements "?

Senator DRAKE

- I will explain why I do not think it advisable to do so. There is a great deal in having the wording of clauses kept as nearly as possible to the language of Acts that have been in existence for some time. We thus secure the advantage of judicial decisions. If this clause has been in the New South Wales Postal Act for 34 years, in the Queensland A.ct for 11 or 12 years, and probably in other acts in other States for

a number of years, it is not advisable to alter the wording further than , is absolutely necessary.

Senator HARNEY

- Has there ever been a decision under this clause 1

Senator DRAKE

- I do not know. If there has never been a penalty inflicted under it, I am inclined to think that the committee has wasted an hour and a half in discussing it.

Senator Harney

- I doubt whether any one could draw an information under this clause ; and I think, therefore, that it has never been utilized.

Senator DRAKE

- The clause may stand as a deterrent to possible wrong-doers.

Senator CHARLESTON

(South Australia). - Unless the Postmaster-General consents to postpone this clause with a view to re-drafting it, I shall, on the report stage, ask for a recommitment, and then the whole discussion will probably take place over again. It will be well for the Minister to accept the advice that has been offered to him by

Senator Sir Josiah

Symon. I object to the clause as being a drag-net provision which will be a terror to every public servant.

Senator McGregor

- It would only be a terror to evil-doers.

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Senator CHARLESTON

- The clause inflicts a penalty for breach of arrangements. Let the committee think of that for a moment. The Minister will be well advised if he postpones the clause.

Senator PLAYFORD

(South Australia). - I would also press for a postponement of 'the clause. Furthermore, I grumble that we have a Bill placed - before us which says in a marginal note that a certain clause is taken from a certain Act of Parliament in another State, and it is subsequently found that the clause although taken from that Act, has been altered in a great many particulars. An enormous penalty is imposed by the clause, which is not imposed in the other Act. We should be informed if clauses are altered when they are transferred from existing Acts. That is the practice in South Australia. If only a verbal alteration be made an intimation to that effect is given in the marginal note. In future it will be a great convenience if that practice is followed. I venture to think that this clause must be copied from an old obsolete provision which has never been acted upon in New South Wales, and has produced no results. If the Postmaster-General will postpone the clause, and will in the meantime telegraph to New South Wales and ask whether this provision has ever been acted upon there, and what benefits have been derived from it, the committee will be glad of the information. If the Deputy Postmaster-General of New South Wales can say that it has been acted upon, then I shall be quite willing to assist the Government in placing it in the Bill. I am confident, however, that a clause like this has been obsolete for years.

Senator Sir JOSIAH

SYMON (South Australia). - Does the Postmaster-General intend to postpone this clause?

Senator Drake

- I do not think so.

Senator Sir JOSIAH SYMON

- Then I desire to strike out the words " arrangements or " from this clause.

Senator Millen

- In order to allow the honorable and learned senator to do so, I will temporarily withdraw my amendment. Amendment, by leave, withdrawn.

Senator Sir JOSIAH SYMON

- I would prefer to see the clause postponed, but as the Postmaster-General has decided to go on with it, I shall move at once to have it amended. There is some definiteness in charging an officer with an offence in failing to comply with regulations, but not in charging him with neglect to comply with any "of the arrangements" to be made. I move -

That the words "arrangements or," line 8, be omitted.

Amendment agreed to.

Amendment (by Senator Millen) proposed -

That the words "one hundred," line 12, be omitted, with a view to insert in lieu thereof the words "twenty-five."

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

Ayes 12

Noes 13

Majority 1

Question so resolved in the negative.

Amendment agreed to.

Amendment (by Senator Sir Josiah Symon) agreed to -

That the words, "or imprisonment for any term not exceeding two years," lines 13, 14, be omitted.

Clause, as amended, agreed to.

Clause 104 agreed to.

Clause 105 -

Any driver of a vehicle used for the conveyance of mails, and any guard or other person in charge of a mail, whether conveyed by a vehicle or on horseback or on foot who-

loiters on the road ; or

wilfully misspends or loses time ; or

is under the influence of intoxicating liquor ; or

does not in all possible cases convey the mail at the speed fixed by the Postmaster-General for the conveyance thereof, unless prevented by the weather or the bad state of the roads, or an accident, the proof whereof shall be on the person charged, shall be liable to a penalty not exceeding £10.

Senator HARNEY

- I should like to ask the Postmaster-General where this clause comes from?

Senator Drake

- From Queensland.

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Senator HARNEY

- I have only to say that it offends against every rule of grammar and against every rule of common sense. I would ask every honorable senator to read the clause. The first thing I would like to ask - and I know that the Postmaster-General is an adept in the rules of philology - is this: What is the difference between loitering on the road, or wilfully misspending or losing time on the road? If the driver "loiters," I take it that he does not under this clause wilfully misspend his time ; and that if he wilfully misspends it, he does not lose it. Then, apparently, if the driver takes a good deal of intoxicating liquor and lies down upon the road, he does not either loiter, misspend, or lose his time, because if he did it would not be necessary to put in a special paragraph to deal with him for being under the influence of drink. .

Senator McGregor

- He might go too fast if under the influence of drink.

Senator HARNEY

- If he goes slowly along the road, looks about him, picks primroses, and does things of that kind, I take it that he is not in all possible cases going at the greatest possible speed. Therefore, paragraph (d) apparently excludes paragraphs (a), (b), and (c), and it is possible for a person to go very slowly along a road, not carrying the mails with the greatest possible speed, and still be neither loitering nor wilfully misspending his time.

Senator O'CONNOR

- The honorable and learned senator would make a good defence for him.

Senator HARNEY

- Apart from these redundancies there are some serious objections to the clause. If a person carries a mail with all practical speed he ought not to be penalized for loitering on the road, even for directing his attention and time to other matters. If there is a period within which mails must be carried, then there is no

necessity for punishing the carrier for loitering or mispending his time, and paragraph (d) covers everything. If it is merely said that in all cases the mail shall be conveyed at the speed fixed by the postmaster, that is quite enough. If a person carries out that requirement he is to be his own master in determining how he shall occupy his time on the road. If he has an hour within which to deliver his mails, and, by riding a bicycle, he is able to carry out that work in a quarter of an hour, there is no reason why he should not stop on the road and pick primroses for his girl if he wishes. .

Senator McGREGOR

- No flowery language.

Senator HARNEY

- I am sorry if my language is flowery. It is the subject matter of the language that is flowery.

Under this clause an unfortunate driver could be fined £10 for getting under the influence of intoxicating liquor in the middle of the night, although he did not lose time and was not engaged in the postal service while in that state. I think it must be obvious to the Postmaster-General himself that this is a most absurd clause. It may be thought, after what I have said, that I have pointed out all the incongruities and peculiarities of the clause, but I have not. Not content with all these redundancies it offends against the fundamental rule of all Acts of Parliament by incorporating evidence in an Act, because the offender is not to be punished unless he bears about his person evidence that he has mispent his time. Supposing he is prevented by weather from conveying the mails at the required speed, the effect of the clause seems to be that he can be fined unless he bears on his person the evidence of rain or snow, or whatever it may happen to be. The clause says the proof shall be on the person charged.

Senator Drake

- That is a proper legal expression. .Senator HARNEY.- The proof of what?

Senator Drake

- The proof of the badness of the roads.

Senator HARNEY

- Very good. Therefore if a few rays of sunshine come out after he has been detained by the weather, and his clothes are dry, or if by accident he falls on the road, and does not bear any evidence of the fall, the Minister is not to punish him at all. The Minister may refer me to an Act of Parliament, but I have never in my experience seen in any Act the expression-

The proof whereof shall be on the person charged.

Senator O'Connor

- Constantly..

Senator HARNEY

- If it said "the onus of proof -shall lie on him " I could well understand it ; but, reading the clause grammatically as it stands it requires the proof shall lie on him of the bad weather. Everybody knows what is meant by the term that the onus of proof shall lie upon him.

Senator O'Connor

- Why use a Latin word when an English word will do ?

Senator HARNEY

- "The burden of proof " is the correct phrase to use. If we leave the clause as it stands it seems to me a most anomalous one. I suggest the omission of sub-clauses (a), (6), and (c).

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Senator Drake

- This is serious.

Senator HARNEY

- Honorable senators cannot expect a person seriously to point out ludicrous mistakes. I move - That paragraphs (a), (b), and (c) be omitted, and that paragraph (d) be amended by the omission of the words " in all possible cases," with a view to insert in lieu thereof the words "in all cases where reasonably possible."

Reasonable is a word which is well known to have a legal significance, because it leaves it open to the tribunal to measure the circumstances, but the phrase "in all cases where possible " is too strong. If the POSTMASTER-GENERAL will refer to other Acts he will never find the words " in all possible cases," but he will find the words " in cases where reasonably probable," or " where reasonably possible."

Senator Playford

- The honorable and learned senator would give the 'exceptions afterwards by saying " unless prevented by so and so."

Senator HARNEY

- "We can alter the whole -clause by saying, "shall unless prevented by weather," and so on.

Senator DRAKE

- If Senator Harney is going to apply his hypercritical faculty to all clauses of this Bill, I do not think we shall get through with it this year. I do not want any one to be deceived. I could give the origin of the clause, but to do so I should have to go back to the reign of William IV. I do not propose to go back farther than the reign of Victoria. In the New South Wales Act, which we have been told has been in operation for 34 years, there is a section pretty similar to this one. The difference is that in Queensland, where it was adopted, it has been broken up into subsections. Section 66 of the Postal Act of New South Wales reads as follows : -

If the driver of any vehicle used for the conveyance of the mail or the guard or any person in charge of a mail whether conveyed by such vehicle or on horseback or on foot shall loiter on . the road or wilfully misspend or lose time so as to retard the arrival of the mail at its proper destination or shall not in all possible cases convey such mail at a speed fixed by the Postmaster-General for the conveyance thereof unless the weather or the badness of the roads or any accident shall prevent the same the proof whereof shall lie on the defendant he shall on conviction thereof forfeit and pay any sum not exceeding £50.

The section in the Post and Telegraph Act of Queensland is in these terms -

Any

driver of a vehicle used for the conveyance of mails and any guard or other person in charge of a mail whether conveyed by a vehicle or on horseback

of

foot who

loiters on the road or

wilfully misspends or loses time or

is under the influence of intoxicating liquor or (i) does not in nil possible cases convey the mail at the speed fixed by the Postmaster-General for the conveyance thereof*' unless prevented by the weather or the bad state of the roads or an accident the proof whereof shall be on the person charged shall be liable to a penalty not exceeding £10.

I do not see that there is any fault to be found with the language of the clause in any respect. I do riot know whether these were serious criticisms or riot. When a man " is in charge of mails he has to go at the rate of so many miles an hour, and has to be at certain places to deliver his mails at certain times. He is not allowed to hang about and loiter on one part of his .trip, and then rush along at top speed. That is loitering.

Senator Sir JOSIAH Symon

- Does the Minister think it needs all this explanation 1

Senator DRAKE

- No. The reason why I object to the omission of the three subclauses is that I think they are necessary. Sub-clause (c) of this clause is not in the corresponding section of the New South Wales Act, but I think it is very desirable to enact that while the driver is actually in charge, of His Majesty's mails he ought to be sober.

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Senator Lt Col NEILD

- I quite agree with what the Postmaster-General has said with reference to a person being actually in charge of mails ; but the clause does not say anything of the kind. He read an extract from some Act, and I protest against our having merely to sit here to copy other Acts. Surely federation was intended to work some improvement? And surely my honorable and learned friend does not sit here merely to introduce transcripts of antiquated laws % He read an extract from an Act- - I forget of what State - -but there was this great difference, that he read the word "or" instead of the conjunction "and."

Any driver of a vehicle used for the conveyance of mails or any guard.

That is what he read; but here is what is in the clause -

Any driver of a vehicle used for the conveyance of mails and any guard or other person.

There is a marvellous difference between the two. Let us see how the phrase does really read in reference to the driver -

Any driver of a vehicle used for the conveyance' of mails who is . under the influence of intoxicating liquor shall be liable to a penalty not exceeding \pm '10.

It does not say that this driver is to be in charge of mails, but that he is simply a driver of a vehicle. The vehicle may be in the shed, and he has finished his day's -work, but if he is found under the influence of liquor he is liable to a penalty of £10 because he is the driver of 'the vehicle. In the clause there is no provision that he has to be on duty at the time when he gets intoxicated in order to be liable to the penalty. He is liable to the penalty of £10 through being drunk, whether he is on duty or not. It is an idiotic clause. .

Senator McGREGOR

- If the horse got drunk and fell down, then he would be liable.

Senator Lt Col NEILD

- I do not know whether that would be due to the weather. I could read it in another way to show that any vehicle that is under the influence of intoxicating liquor, and cannot plead not guilty on account of the weather, is to be liable to a penalty of £10. It can be read in such a variety of ways that it would take some time to do it. But I am astonished at the Minister complaining of delay here in proceeding with the Bill. Surely we are discharging a most patriotic duty in putting in a length of time over this measure to afford the Ministry an opportunity for considering their financial policy.

The' CHAIRMAN.- I Would ask the honorable senator to confine himself to the clause.

Senator Lt Col NEILD

- I was only answering an observation - a sort of verbal castigation - that came from the Postmaster-General, and I thought we were really very patriotic. I shall support the amendment to omit sub-clauses (a), (i), and (o). <I think that sub-clause (d) covers the whole ground quite sufficiently, and if the others are omitted there will be some appearance of grammar, and some sentiment of common sense in the clause which does not exist now.

Senator WALKER

(New South Wales).I take the liberty of suggesting to the Postmaster-General that we should substitute the word "or" for the word "and," for the reason that the driver of a- vehicle may be quite a different person from the owner.

Senator Fraser

- The dotting of i's and the crossing of t's

Senator O'KEEFE

- I hope that the committee will not agree to omit these three sub-clauses, particularly subclause (c). It would meet the case which

Senator Harney

so lucidly put if to subclause (c) we add that any person shall not be under the influence of liquor while conveying mails or in the discharge of his duty.

Senator Drake

- It is implied in the clause.

Senator O'KEEFE

- It is implied and understood, and if the opponents so desire they can add such words as I have suggested. I know of certain cases where the public have been put to great inconvenience by the drivers of mails having been under the influence of liquor. Another inconvenience has arisen because passengers have met with accidents simply owing to the fact that the driver was under the influence of liquor. I think if it is necessary to omit sub-clauses (a) and (?>), sub-clause (c) should be retained.

Senator MILLEN

- I can quite understand and sympathize with Senator Drake in his protest against the consumption of time; but I think it- would be very much more to the point if it were directed to the draftsman who is responsible for submitting the Bill to us in this form, and not to the committee which is endeavouring to put it right. There is one part which I hope the honorable and learned gentleman will amend in some way. It distinctly provides that the driver of a vehicle, whether on duty or not, shall be liable to a penalty of £10 if

he is found in a state of intoxication. That is not intended.

Senator Drake

- Strike out " and " and put in " or."

Senator MILLEN

- I am not quite certain that that would do. - Senator Sir Josiah SYMON - The word "and" is quite right.

Put in the word "whilst" before the word "used."

Senator Lt Col Neild

.- - That would put the responsibility on the vehicle.

Senator MILLEN

- It is extremely difficult to knock a clause like this into shape on the spur of the moment. I drew the Minister's attention to the difficulty. I think an amendment of that kind should be made. It ought not to be for the committee to allow a clause to go out meaning something which is not intended.

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Senator FRASER

- One would imagine that when the driver of a mail coach gets off his box in the remote parts of the Commonwealth his duties are over, and he is no longer in charge of the mail. Let me assure honorable senators that nothing of the kind is the case. In many places, the driver of a vehicle carrying a mail, or a man carrying a mail with a pack-horse goes hundreds of miles, and he is constantly in charge of the mail. I have travelled to the Gulf by the mail coaches, and I know what I am speaking of. I say that once a man commences his journey from Winton to the Gulf as a mail-man, whether he has a packhorse or a trap he is constantly in charge of the mail. It would be absurd to allow drunken men to have charge of the mails. These men should be sober and reliable men. I agree that the wording of the clause may not be very elegant, but I believe these clauses will be more easily understood than more scientific clauses drafted by scientific lawyers. I think we ought not to spend so much time over them.

Senator MILLEN

(New South Wales). I think I can suggest an amendment that would get over the difficulty. I suggest that we might omit the words " driver of a vehicle used for the conveyance of mails and any guard or other," in lines 1 and 2. In that way we would attach the penalty only to the person in charge of the mail.

Senator Drake

- It is not certain that the driver will be in charge of the mail.

Senator MILLEN

- We do not wish to punish the driver when he is not on duty. He might be driving his coach for the purpose of the mail one day in the week, and driving it during the rest of the week for other purposes than the transport of the mail. Two men cannot be in charge of the mail. There may be three or four associated with it, but there will be one man in charge, who receives a receipt for the mail from the postmaster, and gets a receipt from the postmaster to whom he delivers the mail. That is the person on whom the responsibility must rest, and to whom the penalty must attach. If the amendment at present before the committee is withdrawn, I will move the amendment I have suggested.

Amendment, by leave, withdrawn.

Amendment (by Senator Millen) proposed -

That the words " driver of a vehicle used for the conveyance of mails and any guard or other," lines 1 and 2, be omitted.

Senator DRAKE

- In regard to the amendment suggested, substituting the word " or " for the word " and," I do not think it would greatly alter the sense, but it would certainly have the effect of throwing 'the expression " person in charge of a mail" back to the commencement of the sentence more clearly. The intention of the clause is clear that the person to whom it is to apply is the person in charge of the mail, and he may be either the driver of a vehicle, the guard, or some other person. I think that would be made clear if were substituted the word " or " for the word " and," as has been suggested. If that is done, we shall be in accord then with the New South Wales Postal Act, and perhaps we shall be all right with William IV.

The CHAIRMAN

- I propose taking the amendment of Senator Millen for the omission of the words he suggested up to the word "mails" in line 1, so that other amendments may be made if it is not accepted.

Senator GLASSEY

- The person in charge of the mail need not necessarily be the driver of the vehicle. Persons are often sent in charge of the mail in addition to the driver who is usually in charge of the mail. Such a provision as this is essentially necessary in the interests of the public. I have had practical experience of its necessity, as I have been delayed for two days, after having to pay £5 10s. coach fare and 10s. a day for keep for which I should not have been liable, not because the coach could not go on or because there was any breakdown, but simply through neglect of duty on the part of persons in charge of the mail. When we know that persons in some parts have to wait 20 and 30 days for a mail, it is very objectionable that they should have to wait two or three days more in consequence of the culpable neglect of the person in charge of the mail. I point out that both the driver and the person in charge of the mail may be culpable and it would be unfair in such a case to single out one and let the other go scot free.

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Senator Sir WILLIAM ZEAL

- I think senators should not be too captious in discussing a clause like this, which is for the convenience of the public. If the honorable senators had lived as I have done in some of the remote parts of New South Wales, they would know what an important matter this is. Mails are carried in New South Wales for thousands of miles on horseback, going about from store to store, and unless the greatest care is taken and those in charge are placed under disabilities for neglect, the mails might not be delivered. Some of the remarks which have been made have not been worthy of the occasion.- We are here to carry out public business and if there should be a little slip in the language of the clause it is the duty of honorable senators to rectify it. This is one of the most valuable clauses in the Bill, and those who have lived in places remote from centres of population will know how necessary it is that the Government should hold mail-men with a firm grip.

Vice-President of the Executive Council

Senator O'CONNOR

- I think the committee had best pass the clause as it stands. AVe are dealing with a matter of practical experience in the management of the carrying of these mails. This clause exists in all the State Mail Acts, and it has been found from experience to be necessary. Any man who has had much experience of travelling in remote parts of the country, as most of us had in the old coaching days, will not fail to realize that mails containing most important matter are often in the charge of a "boy of fifteen or seventeen years, who may have to stop a day or a night at some outside public-house, miles away from police protection of any kind. Under these circumstances the Postmaster-General must have some special hold on employees of that kind. There is no hardship about it. Any person applying to be employed in the business will have an opportunity of knowing what this provision is, and will know that he may be fined if he gets drunk while in charge of mails.

Senator Millen

- It does not say "in charge of mails," and that is my objection.

Senator O'CONNOR

- The honorable senator must see that it is quite clear what it means, and I will ask him whether any magistrate would convict a man of being drunk, under the clause, when he was not in charge of the mail at the time ? If you use the expression "in charge of mails," you at once open the door for an ingenious gentleman like my honorable friend, Senator Harney, to whom I have listened with great amusement this afternoon, to raise a number of arguments before the bench as to what the expression, "in charge of mails," means. I think we should shut off that kind of thing whenever we can. AVe should make the language as plain as we can ; and as this provision has stood the test of experience/I hope the Senate will pass it as it stands.

Amendment negatived. Clause agreed to. Clause 106-

Any person who wilfully retains, secretes,, or detains any mail or postal article -

Found by the person secreting, keeping, _ or detaining the same ; or (!>) Wrongfully delivered to the person keeping or detaining the same, shall be liable to' a penalty not exceeding One hundred pounds or imprisonment with or without hard labour for any term not exceeding twoyears.

Senator Lt.-Col.

NEILD (New South Wales). - I should like to know whether it is customary in other Postal Acts to have this

provision with regard to two years' imprisonment in a clause of this kind? The offence does not appear to be an indictable one, and the same objection would apply to it as to the two years' imprisonment provision in clause 103, namely, that a magistrate could not inflict a sentence of two years' imprisonment.

Senator DRAKE

- The offence mentioned in this clause is a very serious one. I see the point made by Senator Neild, and I propose to follow the New South Wales Act and make the clause read -
Shall be guilty of a misdemeanour and on conviction thereof.

I move -

That after the words " shall be," line 7, the words "guilty of a misdemeanour, and on conviction thereof shall be," be inserted.

Amendment agreed to. Senator PEARCE (Western Australia).- I should like to know what is the meaning of paragraph (0) ? What is the offence contemplated by that provision t

Senator DRAKE

- Paragraph («) deals with persons guilty of secreting, keeping,, or detaining, letters or other postal articles found by them, and paragraph (&) refers to persons detaining letters wrongfully delivered to them.

Clause, as amended, agreed to.

Clause 107 -

If any person by means of any false pretence or misstatement induces any postmaster or any officer or servant of the department to deliver to such person any postal article sent by post and not addressed to such person, he shall be liable to a penalty not exceeding One hundred pounds or to imprisonment for any term not exceeding two years.

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Senator DRAKE

- I am not quite sure whether it would be advisable to follow the same course in regard to this clause, making the offence a misdemeanour and reducing the penalty.

Senator Lt Col Neild

- Treat it in the same way.

Senator DRAKE

- Very well. I move -

That after the words "shall be," line 5, the following words be inserted : - "Guilty of a misdemeanour and on conviction thereof, shall be."

Amendment agreed to. Clause, as amended, agreed to. Clause 108-

Any person charged with the delivery of a postal article or telegram who wilfully delivers the same to any person other than the person to whom the same is addressed, or his authorized agent in that behalf, shall be liable to a penalty not exceeding Fifty pounds or to be imprisoned with or without hard labour for any term not exceeding twelve months.

Senator Lt Col NEILD

- I think the term of imprisonment of twelve months in' this clause should be altered to six months, with the object of enabling summary conviction by a magistrate to take place. The offence under the clause seems to be less important than the offences we have been dealing with in previous clauses. I move -

That the word "twelve," line 8, be omitted, with the view to insert the word " six."

Amendment agreed to.

Clause, as amended, agreed to.

Clause 109-" Stealing letters, &c."

Senator HARNEY

- This clause provides that the punishment for stealing letters may be imprisonment for a term not exceeding three years. I always thought the maximum term of imprisonment was two years, and that after that time the punishment was penal servitude.

Senator DRAKE

- That is so in some of the States. I think the point will be dealt with upon some comprehensive plan. I am under the impression that the Acts Interpretation Act deals with the meaning of the word "imprisonment." In Queensland it is the rule that for two years a convicted person is to be imprisoned with o hard labour,

and that that term is the maximum of imprisonment. The minimum for penal servitude there is three years ; but I do not know whether that is so under the Commonwealth.

Senator Harney

- I suppose the POSTMASTER-GENERAL will consider the point.

Senator DRAKE

- Certainly.

Clause agreed to.

Clauses 110 to 112 agreed to.

Clause 113.

Any driver or person having the management of any vehicle plying for hire, who without the permission of the Postmaster-General, permits the same to stand or ply for hire opposite any post-office or telegraph office, shall be liable to a penalty not exceeding Five pounds.

Every hawker, newsvender, or idle or disorderly person, who stops or loiters opposite to, or on the premises of any post-office or telegraph office, shall be liable to a penalty not exceeding Five pounds.

Senator MILLEN

- This clause makes it penal for the driver of a vehicle to ply for hire opposite a post office. Probably the vehicle would be licensed by the municipal authorities. In Sydney one- of the principal cab-stands is immediately opposite the General Post-office. Surely this is an attempt to arrogate a power which it is not necessary to give to the Postmaster-General. The second sub-clause provides that a "hawker, newsvendor or an idle, disorderly person" shall not loiter opposite a post-office. I say little as to the last description of persons ; but is it to be provided that a newsboy shall not be allowed to sell a newspaper opposite a post-office? Apparently a boy could not sell a paper in George-street, Sydney, opposite the post-office, without being liable to a fine of £5.

Senator Sir FREDERICK SARGOOD

- It is questionable whether the Commonwealth has power to make a provision of this kind. Surely the control of the streets is a matter within the purview of the municipal government. The licensing of vehicles plying for hire, and the position of cab-stands, are matters for the municipality. Apart from the absurdity of such a provision, it is questionable whether the Commonwealth has power to make it.

Senator DRAKE

- This does seem rather an extreme power. Of course there is the difficulty that Senator Sir Frederick Sargood correctly points out, that we may be infringing upon the rights of municipal authorities.. At the same time some power ought to be given.

Senator Lt Col Neild

- Sufficient power, I think, will be found in the next clause.

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Senator DRAKE

- That relates to another matter altogether. The provision is purely in the interests of the public. The point is whether people who go to the post office to post or receive letters are to be obstructed by news vendors, or hawkers, or such persons.

Senator Millen

- In such cases would not the Postmaster-General have the same redress as the head of any other department has?

Senator DRAKE

- To clear them away from the place ?

Senator Millen

- Yes.

Senator DRAKE

- And they could come back again immediately.

Senator Millen

- They could do so in any case.

Senator DRAKE

- A similar provision is to be found in the New South Wales Act in regard to the Sydney Post-office. It has existed there for 34 years. The section in the New South Wales Act provides -

If any driver or person having the management of any hackney carriage or other public vehicle plying for hire shall permit the same to stand or ply for hire opposite the General Post-office, Sydney, he shall, on conviction thereof, forfeit for every such offence a sum not exceeding Five pounds, and if any hawker, newsvendor, or idle or disorderly person, shall stop or loiter opposite to or on the premises of the General Post-office, he shall, on conviction thereof, forfeit and pay any sum not exceeding Five pounds.

Senator PULSFORD

- We did not have our General Post-office then..

Senator DRAKE

- Very well, I will allow the clause to go out.

Senator Lt Col NEILD

- I think the information which the Postmaster-General has been good enough to give the committee shows clearly that this is positively an obsolete provision.

Senator Sir WILLIAM ZEAL

- If the Postmaster-General looks into this matter, he will find that the municipal authorities have power to deal with it. If a hackney carriage-driver stopped opposite one of these buildings, for instance, without the permission of the municipal authorities, he would be liable to be moved on by the police and fined. It would be absolutely impossible for the driver of a vehicle to ply for hire opposite the post-office in this city, without running the risk of being arrested and losing his licence.

Clause negatived.

Clause 114-

Any person who wilfully obstructs or retards the conveyance or delivery of a mail shall be liable to a penalty not exceeding £50 or to imprisonment with or without hard labour for any term not exceeding twelve months.

Amendment (by Senator DRAKE) agreed to-

That the word "twelve," line 5, be omitted, with a view to insert in lieu thereof the word " six."

Clause, as amended, agreed to. Clause 115 agreed to". Clause 116 -

Any person who wilfully injures or destroys any letter-box or newspaper-box or receptacle for the reception of postal articles, or any card or notice, the property of the Postmaster-General, or obliterates any of the letters or figures, thereon, shall be liable to a penalty not exceeding Fifty pounds or to imprisonment with or without hard labour for any term not exceeding twelve months.

Senator DRAKE

- In order to secure uniformity, I move -

That the word "twelve," line 8, be omitted with a view to insert in lieu thereof the word "six. "

Senator Pulsford

- The penalty for destroying letter-boxes is enormous under this clause. I think it should be reduced.

Senator DRAKE

- But the offence might be the putting of some combustible matter into a postal pillar.

Senator Lt Col Neild

- I think it would be better to make it an indictable offence.

Senator HARNEY

- If this is made an indictable offence, then it must be dealt with by a Judge and jury. Suppose a person wilfully injures or destroys a letter-box in some trivial way, would it be fair to compel him to undergo the anxiety of waiting for a trial by jury ? The offence under this clause might be exceedingly trivial or very great.

Senator DRAKE

- I prefer to adhere to my amendment.

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Senator Sir WILLIAM ZEAL

- Within the last month the police in Melbourne arrested two children who dropped some matches into a letter-box and set fire to a number of letters. It would be ridiculous to indict mere children to appear before a Judge and jury, and I think the committee should pause before it allows this power to be taken out of the hands of the Postmaster-General. There is a maximum fine of £50 provided, but it does not follow that such a penalty would be imposed by justices in a trivial case. A child might be imprisoned -until the rising

of the court, or even fined a shilling. I think the Postmaster-General should be armed. with a sufficient authority to enable him to protect these pillar-boxes, but the clause goes far enough. . Amendment agreed to.

Clause, as amended, agreed to.

Clause 117 similarly amended and agreed to.

Clause 118 -

Any person who without the licence of the Postmaster-General (the proof of which licence shall be on the person charged) -

sells offers or exposes for sale any postage stamp ; or

places or permits or causes to be placed or suffers to remain on or near to his house or premises the words "licensed to sell postage stamps" or any word or mark which may imply or give reasonable cause to believe that he is duly licensed to sell postage stamps, shall be liable to a penalty not exceeding Five pounds.

Senator PULSFORD

(New South Wales). - Under this clause it becomes an offence for one person to accommodate another by the selling of a stamp. I think some allowance should be made. The clause might be amended to provide that any person who as a matter of business sells postage stamps without a licence shall be guilty of an offence.

Senator Major Gould

-It would be better to strike out paragraph (a) altogether.

Senator DRAKE

- We must protect the licensed vendors of stamps, because we desire to have reliable persons to carry out this duty in the interests of the public safety. It would not do to license persons to sell stamps and at the same time to allow others to sell them in an illicit manner.

Senator Sir Josiah Symon

- Is any charge made for the licence?

Senator DRAKE

- No; we make no charge. We choose respectable persons to do the work, and we allow them a certain commission. In practice no one is ever interfered with for selling another person a postage stamp as a matter of convenience ; but, nevertheless, we must in some way have control over the sale of postage stamps.

It is an ample protection to the post-office and also to the persons who sell stamps, that it is only those who are licensed to do so to whom the post-office allows a commission of 2½ per cent. No one would undertake the business for the fun of the thing, when, by getting the permission of the post-office, a licence could be obtained, and 2½ per cent. commission secured. Paragraph (a)

Senator Sir JOSIAH SYMON

shows, I think, how futile and really inconvenient this might be, because we often go to an hotel late at night to buy a few stamps. There is no object whatever in preventing any one from selling stamps.

Senator Drake

- Oh, yes there is

Senator Sir JOSIAH SYMON

- What object could there be, unless we imagine it possible that any one selling postage stamps would be likely to forge them.

Senator Sir Frederick Sargood

- Or to demand more than their face value.

Senator Sir JOSIAH SYMON

- It appears to me that stamps are very like railway tickets. Instancing this, not as a matter of analogy, I should like to see railway tickets sold all over the town. It is a great nuisance that intending travellers are not able to buy them anywhere.

Senator Lt Col Neild

- They should also be made transferable.

Senator Sir JOSIAH SYMON

- That is another matter. So far as postage stamps are concerned, the public should be able to get them

anywhere.

Senator Playford

- And so they are. This is really an obsolete law.

Senator Sir JOSIAH SYMON

- It is, and it looks as if we were going back to barbarous times in enacting these provisions which restrict business instead of facilitating it. I hope we shall encourage the selling of postage stamps everywhere, and that the post-office will exercise surveillance over those to whom they allow the 2½ per cent. commission.

Senator DRAKE

- There is one matter which Senator Sir Josiah Symon has overlooked, and that is that stamps are things which are easily stolen, and it would be very dangerous to allow them to be sold by any one. That is why we issue licences. No inconvenience has ever resulted from the system. As the honorable and learned senator has said very truly, one can purchase stamps in an hotel, and the sellers of them are never troubled by the postal authorities. Dead in the teeth of this clause, which exists, I believe, in every Postal Act, unobliterated stamps can be soon exposed for sale in the windows of philatelists.

Senator Millen

- Then what is the good of the clause?

Senator DRAKE

- The honorable senator must see that unless we have some restriction there is nothing to prevent persons who have stolen stamps from their employers disposing of them.

Senator Harney

- Is it not so in regard to stolen money?

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Senator DRAKE

- We cannot put a check upon that, but as we have a means of protecting the public in regard to the sale of postage stamps by requiring sellers to be licensed, I think we should avail ourselves of it.

Senator Sir JOSIAH

SYMON (South Australia). - The point as to the possibility of stamps being stolen certainly did not occur to me, but there is nothing in this Bill to prevent stolen stamps from being sold.

Senator DRAKE

- But the persons who are licensed to sell are selected, and we know they can be trusted.

Senator Sir JOSIAH SYMON

- An hotel-keeper might sell stolen stamps. There is no more power under this clause to prevent the sale of stolen stamps than there is to prevent the sale of a stolen horse. There is no check. If money is stolen it may be passed from hand to hand in the same way. If stamps are stolen it is perhaps less difficult to get rid of them in large parcels than it would be to get rid of a large sum of stolen money. The object of this provision is really not to prevent the sale of stolen stamps, but to secure a monopoly to licensed sellers of postage stamps. They are under the control of the department, but the licence means nothing. There is no charge for it.

Senator DRAKE

- There being no charge does not affect the question.

Senator Sir JOSIAH SYMON

- There are no restrictions. The first sub-clause imposes a penalty of £5 on any man who - sells, offers, or exposes for Sale any postage stamp. Why should we do such a thing as that ? Why should we introduce into our legislation a provision imposing a penalty on anyone of us who, to convenience a friend, may happen to sell a postage stamp ?

Senator Glassey

- I have sold them very often to oblige a friend.

Senator Sir JOSIAH SYMON

- A hundred years ago a man was hanged if he stole-

Senator Harney

- A sheep.

Senator McGregor

- A cabbage.

Senator Sir JOSIAH SYMON

- Much less than a cabbage. A man was hanged if he was guilty of almost any petty theft. The absurdity of it is in this century putting on the Commonwealth statute-book a provision that any one selling a postage stamp incurs a liability of £5. Supposing that any one of us, to convenience a friend, sold 5s. worth of postage stamps to him, he is liable to have an information laid against him at the hands of an officious postmaster or some officious policeman, or some seller who may say that his trade is in danger, and he may be brought up before a police court.

Senator Sir William Zeal

- The best answer to that is that it is never done !

Senator Sir JOSIAH SYMON

- It is possible to do it. How would my honorable friend like to be brought up before a police court in Melbourne charged with stealing a shilling's-worth of postage stamps ?

Senator Sir William Zeal

- I know that the senator would forgive me.

Senator Sir JOSIAH SYMON

- I would forgive my honorable friend ; the fact is I would pay the fine which would be imposed upon him ; but I would not like his spotless reputation to be blemished even by violating such an absurd clause as that. Taking sub-clause (6), is it not ridiculous that we are putting that provision on the Commonwealth statute book to be a model for ages to come ? It says that anybody is liable to a penalty of £5 who - places or permits, or causes to be placed, or suffers to remain on or near to his house or premises, the words " licensed to sell postage stamps."

If there are to be penalties imposed for the violation of the regulations, let us put a little thing like that in a regulation because it may be necessary. Where the postal authorities license people to sell postage stamps any licensee has a right to put up the words "licensed to sell postage stamps," in order to induce their sale, but what has he to gain? There is no object. The law is sufficiently protected by the fact that the person who is supposed to be licensed to sell postage stamps, has nothing to gain by doing it. All offences, even criminal offences, as a rule are brought about by the incentive of some gain to the persons committing them. There is no motive of any kind for a man to be licensed to sell postage stamps, but it is to be an offence to sell without a licence. In Adelaide many poor persons with little shops where they, are doing a small storekeeping business, sell postage stamps for the convenience of their customers with a view to encouraging other business. Yet, we are going to put a stop to it.

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Senator Sir WILLIAM ZEAL

- If Senator Sir Josiah Symon will reflect a little he will see that the clause is a useful provision. Perhaps he does not know that in large establishments scores of " pounds' worth of postage stamps are entrusted to young lads for the posting of letters. If we give facilities for the sale of postage stamps it will enable speculation to be carried on to a very large extent.

Senator McGregor

- What has that to do with the Postal department ?

Senator Sir WILLIAM ZEAL

- The Postal department to a certain extent is custodian of public morals, and it should not do that which would tend to bring about an undesirable state of things. I may tell Senator McGregor, as he is of an inquiring turn of mind, this evening, that in the last six months a most painful case occurred in a large establishment here. A very estimable young man, the son of highly respected parents in this city, was found selling postage stamps. The unfortunate boy, through being able to dispose of the postage stamps, lost his situation, which he had held for years, and brought distress and pain on one of our oldest families. If it is required in the neighborhood, it is the 'easiest thing possible for a man to get a licence to vend postage stamps. I may tell Senator Sir Josiah Symon - and I speak with knowledge of the matter - that there is a great demand for these licences, and persons will go a long way to get from the department a licence. It is not exactly the profit attaching to the sale of postage stamps which is considered by the licensee, but the fact that it brings persons to their shops to purchase other commodities. It is of the greatest possible use to a tobacconist to have a licence to vend postage stamps. Although the

emolument which a licensee derives from the sale of stamps is a maximum of 2[^] per cent., and on the sale of stamps of large value it is very much less, yet there is a great demand for these licences. I think it should be controlled, because every honorable senator is aware that a postage stamp is a mere piece of paper with an impress on it and only possesses a certain value because it was issued by the department. If we offer facilities for the forgery of postage stamps or for the removal of obliterated brands we shall create very great opportunities for fraud. In one of the markets of this city a man was making a large sum of money through removing what is called the fugitive ink on postage stamps.

Senator MILLEN

- A similar provision was in operation all the while, so that clearly it did not check it.

Senator Sir WILLIAM ZEAL

- Do not multiply the facilities for doing that sort of thing, but rather repress them and put greater difficulties in the way of these people. If we make avenues of trade to every man who likes to sell postage stamps we shall only add to the difficulties of the Minister very much, and we shall not be doing the public any good. Like Senator Glassey, I have sold postage stamps, but that is not breaking the law in the sense in which it is intended here.

Senator Sir Josiah Symon

- Yes, it is, and the honorable senator has it on his conscience.

Senator Sir WILLIAM ZEAL

- I would ask my honorable and learned friend - and no man here knows more of the working of the criminal law than he does - if he were to prosecute an unfortunate fellow would any justice convict him ?

Senator Sir Josiah SYMON

- I. would rather defend him.

Senator Sir WILLIAM ZEAL

- It is utterly opposed to common sense, and such a thing could not possibly happen. I shall support the Minister, because the provision is founded on experience, and is in force in nearly every State.

Senator PULSFORD

(New South Wales). - I venture to say that the more honorable senators consider the clause, the less they will like it. It is a policy, I may say the boast, of one post-office, that it does all it possibly can to promote and not to thwart the convenience of the public. It is a great convenience to the public to be able to get postage stamps easily, and any effort put forward by the post-office which decreases the facilities for obtaining postage stamps lessens the facilities which it grants to the public. We are bringing our letter-boxes as near as we can to all who post letters. Why not, then, let them have postage stamps with every possible facility ? It appears to me that the Postmaster-General would do well if he would consent to the elimination ' of the clause, but if he insists on proceeding with it I shall be prepared to propose an amendment.

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Senator HARNEY

- I think the clause ought to be omitted. It is perfectly useless for the two purposes that have been put forward to justify it. While it is a great convenience to the public, the Postmaster-General ingeniously seeks to justify it by saying that it is in the interest of the preservation of morals ! i Senator Drake. - No. I said it was in the interest of the public.

Senator HARNEY

- In the interest of the public - how ? Namely, that persons disposed to petty larcenies find impediments in their paths, and therefore are- less likely to carry them out. Our experience of postage stamps is that they pass from hand to hand almost as money does.

Senator Drake

- No. It is not desirable that that should be encouraged.

Senator Sir J JOSIAH SYMON

- Some remittances are made by postage stamps.

Senator HARNEY

- The Minister gays everybody who vends postage stamps Ought to be licensed. I think all of us know that the object of a licence is to prevent abuse in the sale of an article. We license a tobacconist in a way that he may not sell a bad article, and in a way that he may not overcharge, and at the same time to get

revenue.

Senator Drake

- Or a contraband article.

Senator HARNEY

- Will the Minister tell me how any one can charge more than a penny for a penny stamp, or how, unless' he is to be fraudulent, he can give less than a certain article. A licence, therefore, in no way protects the revenue. It in no way saves abuse in the sale of postage stamps. The only possible tiling it can do is to render it more difficult for the peculator to carry on his trade. When we consider the small amount of good it will do in that way, and set it against the great inconvenience it is to the public, we shall see that it is a clause which should not be allowed to stand.

Senator Sir William Zeal

- Where is the inconvenience ?

Senator HARNEY

- If there is no post office near at hand - and it has occurred in my own case hundreds of times - one goes to

Ji n. hotel, a chemist's shop, or any place that is convenient, and puts down a shilling, or two shillings, or five shillings, and gets postage stamps in exchange. It has been said by the honorable senator that the last clause does not aim at persons purchasing stamps in that way. Certainly its author does not intend to punish those persons. But we also have to remember that this clause has to be carried out by an officious body of policemen who, having nothing better to do, are very glad of the opportunity of showing their zeal for special work.

Senator HARNEY

- I am not familiar with the offences that are committed against the criminal law, but this provision has been in existence before. I feel perfectly certain that if any of the policemen knew - in all probability their common sense prevents them from knowing that such a provision has been in existence - they could bring a person up before a justice for selling postage stamps, we would very often find persons brought up to a police court for an offence of this kind as we do in reference to other obsolete and very nominal offences that appear in the statute-book.

Senator Drake

- I do not know of a single case.

Senator HARNEY

- Everything said and done the only gain that the clause gives is that persons who are disposed to sell postage stamps will find it harder to get rid of them. I cannot see much difference between postage stamps and money. Any person who will steal postage stamps will steal money, and the same avenues of detection as enable us to bring to justice the thief of coin will enable us to bring to justice the thief of postage stamps without inconveniencing the public in the way in which the clause would do. I quite agree with Senator Sir Josiah Symon that sub-clause -(b) is utterly ridiculous. What does it say ?

Senator Sir' William Zeal

- Where is your experience?

Senator HARNEY

- My experience is that which exists in the mind of every man who exercises his common sense and takes a rational view of things. As I understand it the principle of penal legislation is to prevent persons doing what they have some incentive or some inclination to do. What possible incentive has a person to put up a placard to say that he is licensed to sell stamps, when he cannot make a penny profit by the sale of a million stamps ? The only person who can make money by the sale of stamps is the person who gets the 2[^] per cent, from the Postal department.

Senator Drake

- I am not quite sure of that.

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Senator HARNEY

- We have had an ingenious suggestion that some persons would like to sell stamps because they might in that way induce people to buy other wares they have for sale, but that is exceedingly far-fetched.

Senator Sir William Zeal asked me to name any person who has been prosecuted for buying stamps from

an hotelkeeper.

Senator Sir William Zeal

- I did not say anything of the kind. It was the honorable senator who mentioned the hotel-keeper.

Senator HARNEY

- I say I can retort with the same class of argument with reference to this sub-clause, and ask Senator Sir William Zeal to give me the name of any person who has been prosecuted for an endeavour to put up a sign that he is licensed to sell stamps unlawfully. No such case can be named, for the reason that no human being, unless he was mad or an idiot, would think of putting up a sign that would not mean the slightest gain in the world to him. I think it is absurd to have in an Act of Parliament a clause penalizing the commission of an act which no one has the slightest inclination to commit, and to prevent the abuse of the sale of a tiling that cannot possibly be abused in the sale.

Senator FRASER

- If I had the monopoly of stamps, and the profit of the sale went into my pocket, as it goes into the pockets of the Commonwealth, I should not hesitate to let every one sell stamps if they chose to do so. I know that in some cases the Commonwealth loses revenue through the fact that post-offices are far apart. I often find that I want to post letters when I have used up the stamps in my pocket-book, and I would t/T to borrow them or purchase them where I could. I have sold stamps to members of my household, and have bought them from members of my household, and I find I have thus been committing breaches of the Act. I may get 10s. worth of stamps at a time, and Tom, Dick, and Harry say to me " Have you got any stamps ? If you have, give me a couple of shillings' worth." That is. a thing that is constantly happening. I see no necessity for the clause at all. There is a very great advantage at present given to the few people who are licensed to sell stamps. Why should it be a monopoly at all 1 It is not like selling opium or spirits. It is not like the sale of a drug that would be harmful, and should therefore be restricted. It is, on the contrary, something that ought to be encouraged. Although the clause has appeared in all previous Acts, I do not see any necessity for it. As for any theft, Senator Harney 1 has said one can steal money in any other way, and it may be just as difficult to prove the theft of a bank-note, a shilling, or a sovereign as the theft of a stamp. It is possible there may be some risk in the matter that I do not see, but I would like to give the other view a trial at any rate.

Senator Lt Col NEILD

- Artemus Ward once remarked - The wages of sin is death and postage stamps.

It seems to me that the present discussion throws a lurid light on the witticism in question. But, joking apart, I think it is opposed to high public morals that we should deliberately enact a law constituting a crime, the breach of a provision which every member of the Senate who has spoken to-night plainly intimates that he would break and that he has been in the habit of breaking in the past. It seems to be entirely opposed to public morals that we should create offences knowing that the law will be broken. It must be patent to us that it is opposed to public policy to induce people to break the law. If this is passed we should find that it would be an offence to discharge small debts with postage stamps. It is a common thing to-day for people to discharge little monetary obligations by sending postage stamps through the post, and subscriptions are made to charities by postage stamps sent through the post.

Senator Fraser

- I have often paid my train fare with stamps.

Senator Lt Col NEILD

- I have certainly known newspaper boys to give stamps for change, and I have seen the evening papers bought from the boys with stamps. Surely these little trumpery transactions of every day are not to be constituted punishable crimes. We shall do very well if we eliminate the clause altogether, and unless it is provided that the offence shall only be the sale of stamps for profit 1 shall be disposed to vote against the clause.

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Senator DRAKE

- I hope whatever is done the committee will be serious in this matter, because I can assure them that it is a very important matter. Senator Neild, in a joking sort of way, quotes Mark Twain - -

The wages of sin is death and postage stamps.

But when was that said ? It was about the time of the American civil war, when specie was very scarce,

and for a time people came to use postage stamps as currency. The expression was used because at that time postage stamps had become recognised currency in consequence of the scarcity of specie. We say that it is very undesirable that postage stamps should be used as specie. Small amounts are paid in postage stamps and stamps are sometimes given in change. We consider that it is not desirable that that should be done, or that it should be encouraged, because we have a very admirable system of forwarding small amounts, in the form of postal notes and money orders, and we think it better that that means of transmitting small amounts should be used. I may say that a very great number of postage stamps are used in the way suggested. We ascertained the other day from Tasmania that the proprietor of Tattersall's sweeps received £10,000 or £11,000 a year in postage stamps. When we were making inquiries with the view to, if possible, introduce a federal stamp, that information came from that State. Where a number of stamps are in that way sent out of one State into another, they are sent back again into the State of origin, and we buy them back at the post-office at a small discount, under certain conditions, for instance, they must be in one strip, and not disconnected stamps. We then sell them again in the usual way in the post-office. Any one can buy stamps at a post office or at any one of the numerous licensed vendors, but if we strike out this provision and allow any one to become a dealer in postage stamps, then stamps will be much more freely used for the purpose of transmitting small sums of money.

Senator Sir Frederick SARGOOD

- There will be no loss to the post-office.

Senator DRAKE

- There will be a small loss of the discount we claim in the repurchase of stamps, because any one getting stamps through the post, without this provision, will be able to sell them again and escape the small discount charged at the post-office. This matter is regulated in the same way in England, where they have most stringent conditions in regard to it. It is dealt with in the Acts 33 and 34 Victoria, which would be 1876. These are the provisions on the subject -

The commissioners may, at their discretion, grant a licence to any person to deal in stamps at any place or places in the United Kingdom, to be named in such licence. And every person to whom such licence is granted shall enter into a bond (which shall be exempt from stamp duty) to Her Majesty her heirs or successors in the penal sum of £100, with the condition that such licensed person does not sell or offer for sale or exchange or keep or have in his possession for the purpose of sale or exchange any stamps than such as he has purchased or procured at the chief office or at one of the head offices, or from some person duly appointed to sell and distribute stamps or duly licensed to deal in stamps : provided that one licence and one bond only shall be required for any number of persons in co-partnership : and any such licence may at any time be revoked by the commissioners.

The next clause is -

Every person who (a) not being duly appointed to sell and distribute stamps or duly licensed to deal in stamps, deals in any manner of stamps in any part of the United Kingdom ; (6) being duly licensed to deal in stamps, deals in any manner in stamps at any house, shop, or place not specified and described in his licence, shall for every such offence forfeit the sum of £20.

That is the British practice.

Senator Harney

- That is quite different to this. It is a licensed person going outside his business.

Senator DRAKE

- It is exactly the same thing. We have passed clause 91 prescribing the form and method of issuing licences for the sale of stamps, and the commission to be paid therefor ; and now it is proposed when we come to the clause which prevents an unlicensed person from selling stamps to strike out the provision and permit any one to sell them. If we are going to allow any person to sell stamps in any little shop it will be, I will not say an encouragement to steal stamps, but it will certainly make the way of the transgressor easier.

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Senator Sir FREDERICK SARGOOD

- The remarks of the Postmaster-General certainly throw a new light upon the matter. The main object of the Minister is to restrict the free issue of stamps. He wishes to compel those persons who desire to send small sums of money through the post to take out postal orders. That may be all very well from the

Postmaster-General's point of view, and may bring grist to his mill, but there is such a thing, as the convenience of the public. It is infinitely more troublesome to the public to have to go probably some distance to take out a postal-note, for which they have to pay, than to put a few postage stamps to the amount required in an envelope. While I sympathize with the Minister in his desire to bring in as much profit to the post-office as possible, I sympathize a great deal more with the 'public in their desire to save as much trouble as they can. The Postmaster-General has given us information which will be of value to the mercantile community of Melbourne, in connexion with Tattersall's sweeps. We have often wondered what becomes of the great number of postage stamps just about the time when money is being sent to Tattersall's. That is the very time, bear in mind, when the temptation to speculation on the part of those who have charge of postage stamps is greatest. We know that Tattersall's is the receiving office of a large number of stamps - to the extent of £10,000. I understood the Minister to say. Not only does Tattersall receive these stamps, but the post-office, by buying them back, becomes a party to the fraud.

Senator Lt Col NEILD

- The post-office becomes a receiver of stolen goods.

Senator Sir FREDERICK SARGOOD

- That is what the Minister tells us, and it throws a flood of light on a matter which has troubled a great number of us for years. Senator Sir William Zeal very properly took up the point that retaining this clause in the Bill will throw difficulties in the way of disposing of postage stamps, inasmuch as those who have stolen stamps will sell them to some person, who will then try to sell again, and thus becomes liable to a penalty. But the proper course for those who have much use for postage stamps is to avail themselves of the opportunity of perforating them with the initials of their firm. The stamps thus become absolutely unsaleable. That is the only practical solution of the difficulty with regard to stolen postage stamps. On the whole, the wiser course would be to strike the clause out, and then let those who have to buy postage stamps take the ordinary precaution of perforating them with their initials.

Senator DRAKE

- That is all very well for the big firms.

Senator Sir FREDERICK

SARGOOD. The small ones can do it as well.

Senator PEARCE

- One reason for retaining this clause in the Bill is, that it is a preventative of forgery. It may become a lucrative business to forge postage stamps if they are allowed to be sold indiscriminately. If only licensed persons are allowed to vend stamps the Postmaster-General has a certain power of tracing them, because those to whom licences are issued must be people of some standing.

Senator O'Connor

- Besides, the licensee gives a bond to the post-office as security.

Senator PEARCE

- What would be the position of a forger of postage stamps if they were allowed to be indiscriminately sold at any tobacconist's shop in the city? The forger would sell a few here and a few there, and attention would never be directed to him. If at the present time a forger attempted to get rid of stamps, and they were sold to a shopkeeper who had not a licence to sell them, attention would be directed to the place at which they were sold, and possibly some officer of the law would inquire into the matter. The vendor would, sooner or later, bring himself under the clutches of the law. That is a reason why this clause should be retained in the Bill. It seemed to me that when the Postmaster-General was quoting the English Act that that measure was drafted with a view to the prevention of forgery, because it is provided in the section quoted that the licensee must give a bond not to receive stamps from any person other than those authorized by the Postmaster-General. Clearly, the intention was that the vendors of stamps should not receive stamps from any other source but the post office. I believe that was the sole reason for the section.

Senator MILLEN

(New South Wales). I take it that the real test of the value of this clause is: Is it intended to carry it out if it is passed

1

Does the Postmaster-General intend to prosecute people who sell stamps without having a licence

If the clause is not to be carried out, it is a waste of time to ask the Senate to pass a useless law. It is of no use putting upon the statutes-book a provision intended to be a dead letter. The Postmaster-General has made out a case for the clause if he intends to carry it out in its integrity, but if he intends to administer it with both eyes shut we are wasting time in carrying it into law.

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Senator CLEMONS

- I intend to support the Postmaster-General in regard to this clause. I differ from Senator Harney because I think it should be passed in its entirety. The Postmaster-General has satisfied me that there are good and sufficient reasons why paragraph (a) should remain in the Bill. The Minister has pointed out that the object is to limit as far as possible, the stealing of stamps. He might have added that it is also useful to prevent the forgery of stamps. I am astonished that both Senator Harney and Senator Symon, who might reasonably be supposed to see through any clause as quickly as any one in the Senate, have utterly failed to perceive that paragraph (b) is a necessary supplement to paragraph (a). They have endeavoured to point out that the paragraph is undesirable, useless, and has no meaning. As a matter of fact it is most necessary that paragraph (b) should remain in the Bill. Paragraph (a) prevents the selling and exposing for sale of postage stamps without any indication that the man selling or offering has a licence ; and then paragraph (b) goes on to say that a man shall not sell them under a false licence or put up a signboard to which he has no right. The clause, therefore, properly contemplates the case of a man who is not licensed, and also the case of a man who uses a false licence, or makes a false announcement on a signboard which he has no right to use. For these reasons I intend to support the clause.

Senator HARNEY

(Western Australia)- - I think it is light to point out what

Senator Clemons

has said, that paragraph

(b)

is not a necessary consequence of paragraph

(a)

for this reason. It is one thing for the Postmaster-General to say we desire to earmark the places at which stamps are sold, but it is another thing to say that the public have the same inclination to ear-mark the places. The only reason why people can desire to put the words "licensed to sell" over their shop doors is that they gain something by it. Clearly under this clause people gain nothing. I find on looking at the English Act, that while a portion of paragraph

(a)

is in it, paragraph

(b)

is not to be found there at all. It is an innovation. Any one reading the English Act sees that the idea of the framers was not to prevent persons selling stamps without a licence, but to give the Postmaster-General a knowledge of the places where stamps are sold. The words used in the English Act would be unobjectionable in our measure. They are -

Every person who not being duly appointed to sell and distribute stamps or duly licensed to deal in stamps, deals in any manner in stamps in any part of the United Kingdom.

We all agree with the Postmaster-General that it is right that he should know the quarters in which stamps are sold, and dealt in by way of business, but we object to a clause which prevents ordinary transfers of stamps from private individuals, or the sending of them in letters in exchange for other commodities. The English section, would not, I think, make it unlawful to send 8d. or 9d. in stamps through the post.

Senator Drake

- Is that selling?

Senator HARNEY

- - Suppose you exchange for something else. It is doubtful whether that is selling or not. Selling does not always imply exchanging for money. There are great conveniences arising from being able to send a few postage stamps through the post in a letter. If the words of the English Act are used in this clause we shall preserve for the Postmaster-General the knowledge of the places where the stamps are sold. Those

words are -

Every person who . . . deals ... in stamps in any part of the United Kingdom.

Dealing in stamps is not solely exchanging them for money in isolated cases, it is making a trade and profit out of their exchange.

Senator Glassey

- In spite of the English Act stamps are generally sold. I have bought stamps in Dublin on a Sunday, paying three halfpence for a penny stamp.

Senator HARNEY

- I think, therefore, that instead of using the words " sells, offers or exposes for sale" it would be better to adopt the words " deals in stamps for a profit or as a general business," which are used in the English Act. Something like that would meet the case.

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Senator DRAKE

- As there is a feeling that the clause should be amended, I think it would be better to postpone it. I move- That the clause be postponed.

Motion agreed to ; clause postponed.

Clauses 119 and 120 agreed to.

Clause 121-

Any person who -

knowingly sends, delivers, or causes to be sent or delivered to any officer or servant of the department for the purpose of being transmitted as a telegram, a message or writing which purports to be signed or sent by any other person without such person's authority ; or

wrongfully signs a telegram with the name of another person without such person's authority, or with the name of some fictitious person ; shall be guilty of an indictable offence, and be liable to a penalty not exceeding one hundred pounds, or to imprisonment with or without hard labour for any term not exceeding two years.

Senator MILLEN

(New South Wales).I think some slight alteration is required in paragraph

(b).

There is a proposal in it to punish with a fine of £100, or to imprison with or without hard labour for any term not exceeding two years, any person who may, for perfectly legitimate reasons, send a telegram under a fictitious name.

Senator Drake

- In the name of another person, and without that person's authority.

Senator MILLEN

- It is right that a person should be punished who wrongfully sends a telegram in the name of another person without that person's authority, but then the paragraph goes on to prohibit the sending of a message in the name of some fictitious person. That might be done for some legitimate purpose.

Senator Keating

- Then it would not be done wrongfully.-

Senator MILLEN

- If the word wrongfully qualifies the whole paragraph then I am satisfied.

Senator Drake

- Certainly it does.

Senator CLEMONS

- I am inclined to agree with Senator Millen's contention, though apparently he has dropped it. I find it very hard to imagine what it is to wrongfully send a telegram in the name of some fictitious person.

Senator Drake

- Look at the side-note.

Senator CLEMONS

- If the Postmaster-General wishes me to understand that this provision is copied from the Western Australia Act then I collapse at once.

Senator Drake

- No. I mean that the subject-matter dealt with is the sending of false telegrams.

Senator CLEMONS

- It means the wrongful sending of a telegram, which need not necessarily be a false one. It is hard to conceive how a man could wrongfully send a telegram in the name of a fictitious person. I think this is an imaginary offence. If it is one which cannot possibly come within actual realization it is quite unnecessary to legislate against it.

Senator STANFORTH SMITH

- In my opinion the provision in regard to the sending of a telegram in the name of a fictitious person is very necessary. On the gold-fields it has been found to be absolutely indispensable. Cases occur where people send bogus telegrams about rich finds in the mines, and sign them under fictitious names. In a mining community, where people are waiting to hear news of a mine, a telegram is sometimes sent by a person who alters the christian name, perhaps, of some well-known man, but uses the surname. That would be a fictitious name. Such messages are sent perhaps to a person who is endeavouring to sell shares for the sender. It would be exceedingly dangerous to leave out this provision and thus make it legal to send telegrams under a false name. There have been cases in Kalgoorlie where telegrams sent under a fictitious name have led to a rise in mining shares.

Senator DRAKE

- By way of illustration, let us take- the case of a person whom we may call " G. T. Jones." In order to send shares up or down, as the case maybe, some person falsely and wrongfully sends a tele in the name of that individual with the one alteration that he signs it as " G. J. Jones," instead of " G. T. Jones." The addressee supposes it to be a mere slip, and the person who sent it, if found out, would say that he did not intend the telegram to be understood as coming from "G. T. Jones."

Senator Clemons

- Would not such a case come under paragraph («.) 1

Senator DRAKE

- If the person sent the message in the name of another man without having that man's authority, he would come under the first part of paragraph (b), but if he altered the initial he might turn round and say, " I did not send the wire in the name of G. T. Jones - I sent it in the name of G. J. Jones." I think the word " wrongfully" is sufficient to cover the whole paragraph, and is an assurance that a person will not be punished for doing an innocent act.

Senator HARNEY

-In my opinion the clause should stand. A great deal of harm may be done by allowing persons to send bogus telegrams. If a man sends a bogus telegram it must have some name upon it. If it is a wrong name used with intent to deceive, then the act is wrongful. If it is the name of a person who only exists in the sender's imagination, then it is a fictitious name.

Senator CLEMONS

(Tasmania). - In England it is quite possible to send a telegram without attaching any name to it. Does the Postmaster-General consider it a greater or a less offence to send a telegram without any name ? I have sent hundreds of telegrams in England without appending any name to them whatever.

Senator Sir Frederick Sargood

- To a registered address 1

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Senator CLEMONS

- No. It may not affect this clause, but if it is possible in England, surely an offence might be committed with much greater facility there than in this country, I fail to see that this clause is necessary to cover any crime that the Postmaster-General may imagine could be committed through the post-office.

Senator KEATING

- I think the clause is very necessary notwithstanding what Senator Clemons has said with regard to the ability of an individual to send a telegram in England without signing any name to it. This provision would not prevent that being done here, because, as already pointed out, the whole of the paragraph is governed by the word " wrongfully." I believe that in some States it is possible to send a telegram with merely the initials of the sender attached to it. Under this clause a man would not be allowed to put a fictitious name to a telegram wrongfully. That one word covers the whole of the clause.

Senator CLEMONS

(Tasmania).- The Postmaster-General will admit that if we contemplate the possibility of wrongfully sending a telegram in the name of some fictitious person, we must also contemplate the possibility of that being rightfully done.

Senator Keating

- In that case it would not come under the clause.

Senator CLEMONS

- Does the Postmaster-General object to sending any telegram to which a fictitious name is attached?

Senator Drake

- That question can be answered. Supposing Mr. Clemens, the American humorist, sent a telegram and signed it "Mark Twain" - -

Senator Millen

- That is a fictitious name!

Senator Drake

- But he would not use it wrongfully.

Senator MILLEN

(New South Wales).It seems to me that it is desirable to give further consideration to this clause.

Senator Harney

has told the committee that the mere use of a fictitious name must be wrong. Now I understand the Postmaster-General to say that the wrongfulness of the thing consists in the intent.

Senator HARNEY

(Western Australia). - What I did say was that it was wrong to put a name to a telegram with the intent to deceive, or to work something. If that name happens to be that of a person whom the sender knows, then the offence comes under the first category. If it happens to lie a name which the sender invents, it comes within the second category.

Clause agreed to.

Clause 122 agreed to.

Clause 123-

Any person employed in a telegraph-office who divulges the contents or substance of a telegram otherwise than by delivering the telegram or * giving a copy of it to the person to whom he is authorized to deliver such telegram or give such copy shall be liable for every such offence to a penalty not exceeding £100, or to imprisonment with or without hard labour for any term not exceeding two years.

Amendment by Senator Drake agreed to-

That the words " guilty of a misdemeanour, and on conviction thereof shall be !! be inserted after the words " shall be," line 6.

Clause, as amended, agreed to.

Clause 1 24 (Erection or maintenance of telegraph lines without authority).

Senator MILLEN

(New South. Wales).I wish to ask the Minister whether, in view of his undertaking to reconsider the whole question of what has been done in regard to the owners of private telegraph lines on their own premises, he will consent to the postponement of this clause. It says -

Any person who without the -authority ,of the Postmaster-General sets up maintains or uses in or on any Crown lands any wires which are set up before or after the commencement of this Act.

That opens up the whole question again ; and if the Minister is willing to postpone the clause until he has decided what he proposes to do in the matter I shall be glad.

Senator DRAKE

- I have no great objection to postpone the clause if that is desired : but I would point out that in any case it is perfectly clear that unless the department is not to have any right to the erection of a telegraph line it is absolutely necessary that a clause of this kind should be passed. I may mention here the way in which I propose to deal with the matter which has been brought forward by Senator Sir Frederick Sargood. In clause 78, after the word "person," I propose to insert the words "for the Postmaster-General or for his own use." That will leave a way open for private lines. I propose also to insert the following new clause, which has been circulated, I think -

The Postmaster-General may, on such conditions as he deems fit, authorize any person to erect and maintain telegraph lines within the Commonwealth, and to use the same for all purposes of and incidental to telegraphic communication.

Still we must have this clause.

Senator Millen

- Had it not better be postponed?

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Senator DRAKE

- Very well.

Clause postponed.

Clause 125 -

Any person who having entered into an agreement with the Postmaster-General for the use by such person of a telegraph line without the authority of the Postmaster-General demands or makes any charge or receives any payment or valuable consideration from any other person for the use of the same shall be liable for each offence to a penalty not less than Two pounds and not exceeding Fifty pounds.

Senator PULSFORD

- I shall be glad if the Minister will explain the position which, under this clause, will be occupied by persons who, jointly, have taken a mutual contract for the use of a telephone or telegraph line.

Senator DRAKE

- He must not make any charge to the public without having an arrangement with the Postmaster-General. We make an arrangement sometimes, when, perhaps, a small settlement has grown up round about, to allow the person who has a private line the right to take messages for the public and to make a certain charge. But this clause is to provide that he must not make a charge to the public without having made that arrangement with the Minister.

Senator PULSFORD

(New South Wales). - That does not cover the whole matter. In many places where half-a-dozen persons have offices round a passage or a hall in a building, they unite to have the use of one telephone.

Senator Drake

- They have no right to do so.

Senator PULSFORD

- That is done with the knowledge of the postal authorities in many places. For instance, in chambers where there are half-a-dozen solicitors a little room is often set apart for the whole of them. That is a common practice.

Senator O'Connor

- But it is only the person who makes the agreement with the post-office who is liable here. That is, the one in whose name the telephone is entered.

Senator PULSFORD

- What is his position in regard to the others who contribute to him towards the expense?

Senator DRAKE

- I am not aware that that has ever been sanctioned in any of the States.

Senator Charleston

- They often have one telephone between a lot.

Senator DRAKE

- I did not know. I shall make some inquiries.

Senator Keating

- It is done by regulation in Tasmania.

Senator DRAKE

- I expect that regulation has been made because it has been found almost impossible to stop the practice, but under the regulations I have been accustomed to the person who has the telephone is under an obligation not to allow any one outside his own clerks and servants and family to use it. Otherwise, a man might pay £5 or £6 a year for a telephone, and make it serve, perhaps, for hundreds of persons. I know there is a very great difficulty, amounting almost to an impossibility, to check that sort of thing. But there is a system - I forget exactly the technical name of it - by which the number of messages is

automatically recorded.

Senator Sir Frederick Sargood

- Charging so much by the call.

Senator DRAKE

- The number of messages is recorded, and then an extra charge is made for the excess number of calls. That seems to me to be the fairest way, and it is a method which certainly will have to be adopted, though, of course, it will involve a considerable amount of expense. So soon as that is done all arrangements with regard to the number of persons speaking through a telephone can be done away with. The practice which has obtained in some places of a number of persons in one building using a telephone which is in the name of one person has not been recognised by any regulations that I know of.

Senator Millen

- The Vice-President of the Executive Council can give instances where telephones are fixed in barristers' chambers.

Senator CHARLESTON

- In South Australia, so far as I can remember, the persons using the telephone are all known to the Postmaster-General. They have made agreements with the Postmaster-General, and instead of having three telephones for three offices, they use one telephone for the building, but each person contributes his own quota to the Postmaster-General.

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Senator O'CONNOR

- Senator Pulsford has asked a question which is really a question of law. I think the answer is a very plain one. Although, perhaps, we ought not to do it, we either use the telephones of other persons or allow persons to use ours. Supposing there is a person in whose name the telephone is held, and he allows a charge to be made, or makes a charge knowingly, it is quite clear that he is liable under this clause. But supposing without his knowledge a person who has his permission to use his telephone does make a charge he is not liable in any way. That is an ordinary principle of criminal law. There cannot be an implied agency to commit an offence. I think any lawyer will corroborate what I say. Under these circumstances if the person who made the agreement does not know what is being done, does not make a charge himself, he cannot be criminally liable.

Senator WALKER

- The Chamber of Commerce in Sydney has asked me to mention a matter to the committee, suggesting, in fact, whether a charge might be made. There are many private lines erected at the joint expense of a number of persons. While so far as the department is concerned it stands in the name of one person, each party contributes to the rent. Could not a provision be made for such a case not coming within the penalty of the clause ? I think we ought to have a provision of that kind. The Equitable Assurance Company, for instance, has one telephone, and all the tenants, so far as I know, use it.

Senator Sir Frederick Sargood. - There are plenty of such cases in Melbourne.

Senator WALKER

- Should not a regulation be made for a case of that sort ?

Clause agreed to.

Clause 126-

Any person who -

unlawfully or maliciously cuts, breaks, throws down, injures, or removes any battery, machinery, wire, cable, insulator, post, or other matter or thing whatsoever, being part of any apparatus used or employed in or about any telegraph, or in the working thereof; or

unlawfully or maliciously prevents, or obstructs in any manner whatsoever, the sending, conveyance, or delivery of any communication by telegraph ; or

interrupts, or impedes the use of any line, or the transmission of any, message, shall be guilty of an indictable offence, and shall be liable to imprisonment, with or without hard labour, for any term not exceeding three years.

Senator HARNEY

- I observe the words "three years imprisonment" in the clause. That term ought to be limited. Penal servitude is the correct expression to use I think.

Senator Drake

- In some States they have penal servitude, while in others they have nothing but imprisonment.

Senator Walker

- Should there not be a provision made for fire brigades to be at liberty to cut the lines?

Senator Drake

- They would not come under the clause, because the words "wilfully and maliciously " are used.

Clause agreed to.

Clause 127 agreed to.

Clause 128-

Any person offending against the provisions of either of the two last preceding sections may with or without warrant be apprehended by any other person and delivered to a police officer or conveyed before a justice to be dealt with according to law.

Senator MILLEN

- Is it proposed to give every man the right to arrest any one who is liable to a penalty of £10?

Senator Drake

- It is indeed.

Senator MILLEN

- The clause sets out what it intends, but I doubt very much whether we should pass it in that form.

Senator DRAKE

- We have enormous lengths of telegraph lines scattered all over the country, in many places where there are practically no police. Is a man to stand by when he sees any one wilfully or maliciously injuring a telegraph line ?

Senator Millen

- Am I to stand by if I see a man stealing a horse ? I have no right to arrest him.

Senator Harney

- Not for stealing a horse, for that would be a felony, not a misdemeanour.

Senator DRAKE

- If the honorable senator saw a man stealing a horse, I suppose he would interpose and stop him whether the law permitted him to do so or not.

Senator Sir Josiah Symon

- He would meet with the usual fate of the man who interposes in a quarrel.

Senator HARNEY

- I think there is something wrong in the clause. As I understand the law, if an ordinary bystander sees another in the act of committing a felony, he is then entitled to arrest him, but that is a misdemeanour, I take it. It is a very drastic tiling to alter one of the fundamental principles of the criminal law, and allow a bystander to arrest a man for a misdemeanour under this Act.

Senator Drake

- It is a very special class of offence.

Senator O'Connor

- The policy of the clause is to encourage persons to stop it at once, and to arrest the man.

Senator HARNEY

- It is quite contrary to the ordinary principles of law.

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Senator O'Connor

- But the circumstances are very special.

Senator MILLEN

(New South Wales). - In the very class of country which the Postmaster-General referred to the lines pass over sparsely populated districts, and what is to prevent any one from coming along, and because he sees a man who may be acting suspiciously towards a line, or because he for some other reason pretends that the passer-by is doing it, from immediately arresting that man and dragging him perhaps 100 miles to the nearest police station ? If a man wants to interfere, if he desires to protect public property he will stop the commission of the offence, and having done that he will be able to give information to the nearest officer of police. That is quite sufficient. Why do we want to clothe that man with the authority to

make a constable of himself straight away ? He may make a tremendous nuisance of himself by arresting a man for the purpose of spite or by dragging him a very long distance to the nearest police station. There can be no greater protection of the property of the Postmaster-General by the clause than without it. If a person is prepared to go to the extreme of arresting the offender, he certainly will step in and stop him from carrying out the offence if he can, and if he has stopped him there is no great hurry about the arrest, because information can then be given to the ordinary police officer, who can proceed against the offender.

Senator DRAKE

- Sometimes out in the far west we have cases, which seem to me to be abominable crimes, of men cutting down a telegraph post to boil a billy. Surely we are entitled to take some extraordinary means not usually recognised by the law to prevent the commission of such offences and if necessary to punish the offenders. The whole of the telegraphic communication of a continent may be thrown out simply because a man happens to be too lazy to go and get firewood unless we can enlist the sympathy and help of any one who may happen to be there when there is no police constable to stop an offence of that kind.

Senator Sir JOSIAH SYMON

- Really this is one of those provisions the passing of which brings the statute law into disrepute. How will any of these casuals, who may be in the far wilds, know that he has the power to arrest any one committing such an offence ?

Senator O'Connor

- In the case of persons who do not know it can do no harm, and in the case of persons who do know, it may be of very great assistance in preventing such offences.

Senator Sir JOSIAH SYMON

- Who is the person who will know ? This is intended to apply to some casual individual wandering, about in the remote parts of Australia.

Senator Drake

- A. travelling line repairer.

Senator Sir JOSIAH SYMON

- If so, give the line repairer authority directly, but do not put in a clause that will be a dead letter. The argument is used that this will, be a dead letter, except with respect to those who know something about it. If the few who know anything about it are line repairers, put in a provision that line repairers are to have authority, without warrant, to arrest any person suspected even of destroying a telegraph post. Does any one imagine that a man in the far western country seeing a person cutting down a telegraph pole will attempt to arrest him ? He would not do anything of the kind. Private persons who are not clothed with the authority of the law are always unwilling to undertake to arrest any one. It is with the greatest difficulty that any one can be got to act as a special constable.

Senator DRAKE

- What harm will be done ?

Senator Sir JOSIAH SYMON

- The harm is in putting a provision in the Bill which will be a dead letter. All legislation is brought into disrepute when that sort of thing prevails. We might follow this with a chapter from Genesis, and say that it was a proper thing to introduce into this Bill, because it could do no harm.

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Senator DRAKE

- Not only will it not do any harm, but I think it is going to do a lot of good. I have stated special reasons why it is necessary to have special means to protect telegraph lines and apparatus. I mentioned the case of men out in the far west who sometimes commit offences of that kind. But there are a number of different classes of persons who, under a provision of this kind will be able to help in protecting telegraph property - many officers of the telegraph department, and officers of the railway department also, because a great many telegraph lines run alongside railways, and injury might be done to some of them. No doubt if I went on I could mention other classes of persons who would be able to assist in protecting the property of the telegraph department. I know it is an unusual provision, but it deals with unusual circumstances, and that is a sufficient justification.

Senator HARNEY

(Western Australia). - It has occurred to me, I do not know whether the Postmaster-General has also thought of it, that a clause of this kind may, in not very improbable circumstances, lead not only to a breach of the peace but to manslaughter. The Postmaster-General is well aware of the reason of the ordinary rule of law, that only a policeman or a person armed with a warrant can arrest another. Everybody is supposed to know that one is not justified in resisting an officer of the law. If a person is arrested by one clothed in police uniform or having a warrant, he will not resist because he knows that the punishment is very severe for resistance. But if I am engaged in cutting down a telegraph-post, and an individual comes up to me who is not in policeman's clothes, and has no warrant, and endeavours to arrest me, I will feel that he has no right to arrest me, and that I am justified - as I would be if this clause were not here - in using as much force as may be necessary to repel him. If he persisted in his attack I might persist in my resistance, until, perhaps, the result might be severe injuries or loss of life. That is a thing which is not only possible, but exceedingly probable under this clause. The law is most careful to have it brought well home to a man, that he cannot resist arrest by lawful authority, and persons are very often in the criminal courts sentenced to long terms of imprisonment for resisting, however slightly, arrest by a policeman. The object is to leave a healthy feeling upon the minds of the public that once our liberty is sought to be obstructed, by one who bears the badge of authority upon him, we must put down our hands and trust to a court to vindicate our innocence. But if a person arrests another, who is not justified by law in doing so, then the person sought to be arrested is entitled to resist, whatever violence is used by the person seeking to arrest him, even to the killing of that person, if he will not permit one's liberty otherwise. How will these persons in the far west know of this clause? Where we may have to deal with full-blooded passionate individuals with all the wildness of nature due to the desolation around them in the backwoods such a clause may well lead to loss of life.

Vice-President of the Executive Council

Senator O'CONNOR

. - I am afraid we are wandering a long way from the real matter we have got to decide. Senator Harney seems to be under the impression that the law in all the States, is as it was at the time of the common law he speaks of. If any of the offences under clause 126 took place in New South Wales, for instance, any person who saw the offender commit any of those offences would be entitled to arrest him, whether he was a constable or not.

Senator Sir Josiah: SYMON

- Where ?

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Senator O'CONNOR

- In New South Wales under the Criminal Law Amendment Act in force in that State at present. It is provided that

Every constable or other person may without a warrant apprehend any person in the act of committing or immediately after having committed offences punishable by way of indictment or upon summary conviction under this or any other Act, and it goes on then to provide that the person arresting may take the person arrested before a court to be dealt with. I only mention this to show that we have gone a long way beyond the common law, the honorable and learned Senator Harney speaks about. And for this reason : In a young country sparsely populated as ours is, it is very often necessary for a person who is not a constable to take the law into his own hands by carrying a person, whom he sees committing an offence, before a court to be dealt with. It is only in the case of a person who actually sees the offence committed that the power exists. There is nothing in this clause which carries the law in some of the States any further than it goes at the present time. Except in one particular, in clause 127, which provides that any person who attempts to commit any of the offences in clause 126 shall be liable to a penalty, and any person may arrest any one whom he sees attempting to commit an offence. Honorable senators have given great consideration to the feelings of the person being arrested and of the person arresting him, but some consideration should be given to the property of the Commonwealth, which in distant parts of the country may be damaged or interfered with by some irresponsible person for the sake of some mere momentary gratification or idle mischief. Irreparable injury may be done in that way, and why should we not give the power to any person who happens to be on the spot, and sees it being done, to take some action to prevent it 1 It may be quite true, as has been said, that a person seeing an offence of the kind

permitted may endeavour to stop the offender ; but without the authority to arrest, how can any person stop him! If there is the authority to arrest, any one can stop him, by taking hold of him and taking him away. We must do one thing or the other if we intend to protect this great property of ours, extending in places where it is without any protection except that of persons who may casually see offences of this sort committed. Let us carry out the intention as it is carried out in other parts of the Bill. I cannot understand how there is doubt and difficulty on the part of some honorable senators to give this power to a person to stop the commission of what may be an irreparable injury to some of the machinery or wires referred to in paragraph (a), instead of requiring a person seeing the offence committed to travel 50 or 100 miles to some place where he can get a constable.

Senator HARNEY

- Of course, in a new country it does make a difference.

Senator O'CONNOR

- Of course it does. Senator Harney's reasoning was perfectly just as to the foundation of the law he spoke of, but owing to the circumstances of the country, we have long ago recognised that there is a great deal of difference, and it is necessary in a country like this to put some powers, which are rather unusual, into the hands of the individual. What harm does it do anybody ? If a person has committed an offence under the section, it has to be proved before the magistrate, and, if it is not proved, he will be acquitted. What does it matter to him whether he is taken before the magistrate by a constable or by a private citizen ? , On the other hand, if we do not give this power of arrest, there is no power to stop the commission of these injuries ; because, without the authority of this clause, what right would a private individual have to interfere with a man cutting down a telegraph-pole to boil his billy, cutting a wire, or shooting at an insulator with a revolver to keep himself in practice? If any person witnessing such an offence has the power to arrest, he can stop it physically by taking the offender away from the scene of the offence.

Senator HARNEY

- Besides, you have telegraph posts where you have no policemen.

Senator O'CONNOR

- Exactly. That very often happens.

Senator GLASSEY

- There is a death-bed repentance on the other side.

Senator O'CONNOR

- No, but I will admit that, when anything of this kind is pointed out to Senator Harney, he has always the frankness to admit that he has been wrong. I hope that we all have that feeling, and I hope to hear admissions of the same kind from other honorable senators who have taken the opposite view of this question. The best way of making that admission is to vote the right way on the clause, and I submit that it should be allowed to go as it stands.

Senator MCGREGOR

- I can clearly see now, after the statement made by Senator O'Connor, that we must put Senator Harney down as an antiquated member of the legal profession. Even if there was no doubt in that senator's mind as to the advisableness of giving this power to an ordinary citizen, we must remember that he has studied in the past matters relating more particularly to private property held by railway and telegraph companies, and by private individuals. However,, in these States and the Commonwealth,, the telegraph lines, and everything connected with them, belong to the whole people, and when we are giving this power to any ' citizen to arrest an offender under this clause we are giving him the power to protect his own property,. That is a different thing altogether. If Senator Harney knew the condition of things, existing in parts of the Commonwealth that are not adjacent to cities, he would see the necessity of a power of this description-, being given to the people to protect property which belongs to themselves. Senator Sir Josiah Symon has said that if a man was cutting down a telegraph post it would be unreasonable to expect any one else to arrest him if he was going to boil his billy with it.. Probably some persons would help the man to drink the tea. But there might be some one else on the spot who had, more respect for public property. I hope the clause will be carried. c ~r'~

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Senator CHARLESTON

- Suppose I were in the interior of Australia and arrested a man who was destroying the property of the Postmaster-General. I might arrest him two or three- hundred miles from » police station. Am I, under those circumstances, to seize the first mail coach and insist upon the driver taking myself and the arrested person to the nearest police station ? Having brought him there, if I fail to establish my case, shall I be compelled to pay the expenses 1

Senator DRAKE

- It is not compulsory. It is only optional.

Clause agreed to.

Clauses 129 to 135 agreed to.

Progress reported.

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22:10:00

Senate adjourned ut 10.10 p.m.