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1901-07-17

Senate.

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

#### QUESTIONS

#### HANSARD: SESSIONAL EXPENSES

Senator STEWART

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

The average weekly cost of printing Hansard to date?

The average weekly cost of lighting and heating the Parliamentary Buildings to date?

The average weekly cost of extra attendants owing to Parliament being in session ?

Vice-President of the Executive Council

Senator O'CONNOR

- The average weekly cost of printing Hansard to date, proof and final editions, is £302. The weekly cost of lighting and heating the Parliamentary Buildings for the months of May and June is £571s. The average weekly cost of extra attendants, owing to Parliament being in session, is £37, being the wages of sessional hands employed in the Senate, the House of Representatives, and the refreshment-room.

#### COMMITTEE OF ELECTIONS AND QUALIFICATIONS

Saunders v. Matheson.

Vice-President of the Executive Council

Senator O'CONNOR

. - With regard to the order of the day for the consideration of the report of the Elections and Qualifications Committee on the petition against the return of Senator Matheson, we are all aware that matters of privilege ought to be dealt with at the earliest possible moment, and if there were anything in the report which demanded to be immediately dealt with, I should not ask the Senate to depart from the usual procedure. There is no immediate hurry, and I received a communication to-day from Senator Sir Josiah

Symon, who moved the motion which resulted in the report, stating that he would not be able to be here, and asking me to postpone the consideration of the matter until this day week. As the question involved is an exceedingly important one, and as he, I gather, was practically responsible for the report, I think it only fair to him, and advisable in the interest of the Senate, that the postponement should take place. I therefore move -

That the order of the day be read and discharged, and made an order of the day for Wednesday next.

Senator Sir Frederick Sargood

- How will that affect the senator concerned?

Senator O'CONNOR

- He has informed me that he makes no objection to a postponement.

Senator WALKER

- Mr. President-

The PRESIDENT

- I do not think that this matter ought to be debated.

Senator WALKER

- I only wish to ask a question, namely, are the minority at liberty to enter their reasons for disagreeing with the report of the majority?

The PRESIDENT

- They can, in debate.

Question resolved in the affirmative.

#### POST AND TELEGRAPH BILL

In Committee

(consideration resumed from 10th July, vide page 2282) :

Postponed clause 89-

Telegrams shall as far as practicable be transmitted in the order in which they are received, but urgent telegrams, that is to say, telegrams for which the prescribed increased rate is paid and telegrams relating

to the arrest of criminals, the discovery or prevention of crime, the administration of justice, and when so required telegrams on the public service shall be transmitted before other telegrams.

Provided that regulations may be made prescribing the order of transmission of delayed telegrams, that is to say, telegrams upon which reduced rates are paid.

Every officer wilfully offending against the provisions of this section shall be liable to a penalty, not exceeding One hundred pounds or imprisonment not exceeding two years.

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Postmaster-General

Senator DRAKE

. - Senator Sir Frederick Sargood has an amendment to move on this clause, but before proceeding with the business I wish to state that I have had all the amendments proposed to be made reprinted and circulated. They comprise the amendments which I hope to make on recommittal, and also the amendments of which notice has been given by that honorable senator. If any amendments have been omitted I shall be very glad if they are pointed out to me.

Senator Sir FREDERICK SARGOOD

- The amendments, as they have been reprinted, make confusion worse confounded. This morning I received a copy of the amendments covering a volume of paper, and arranged very differently from what I have been used to. It would be a wiser and more convenient plan to print the amendments of each senator on a separate sheet. As it is, I have to hunt all over this paper to find my amendments.

Senator Drake

- I have endeavoured to put them all in.

Senator Sir FREDERICK SARGOOD

- I do not say that they are not contained in the paper, but if the amendments were put under the name of the honorable senator by whom they are to be moved, we should know exactly what to do. I hope that the Minister will give consideration to that suggestion.

Senator Drake

- This practice was adopted without any suggestion from me in the first place. I simply followed it.

Senator Sir FREDERICK SARGOOD

- The amendment of which I gave notice was for the insertion of a sub-clause, providing that a telegram should be transmitted by the route prescribed by the sender, at the tariff for that route. This is in accordance with the agreement of the International Telegraph Convention at Berne. At present there is what is called Reuter's telegraph line, which would be more or less under the command of the post-office. There is also the route by way of the Cape and before very long there will be a route by the Pacific, and probably also a route north from the Cape or what is known as the Cape-Cairo line. The principle was laid down by the Berne Convention in regulation number 2 that the sender of a telegram should have the right of deciding by what route his message should be sent. The object of my amendment is to carry out that rule. I need hardly say that the immediate effect of it would be that those who preferred to send their messages by Reuter's line could do so. On the other hand, those who preferred to send their messages by the line of the Eastern Extension Telegraph Company could do so. Unless this concession be given in the Bill it will entirely destroy the position taken up by New South Wales and South Australia under which - rightly, I think - they have taken advantage of that company's line, and, as a matter of fact, a very large number of merchants invariably send by that line in preference to the others as being equally rapid and more economical. I move -

That after sub-clause (2) the following new subclause be inserted " (3) Telegrams shall be transmitted by the route prescribed by the sender at the tariff for that route."

Senator DRAKE

- I do not think this amendment will be of any benefit, and it might under certain circumstances be very mischievous. I do not see how it can effect any good purpose so long as there are different rates for cable messages, because if the sender pays the lower rate his message will be sent by that particular service, whereas if he pays the higher rate it will go by the service for which the higher rate is charged. I cannot see that there is any advantage in giving the sender the right to indicate the route if rates are dissimilar.

Senator Millen

- Might not the department charge the higher rate and then, having the option to send by which line it

liked, send the message by the cheaper route ?

Senator DRAKE

- Most certainly not. Senator Millen. - It would have the opportunity of doing so.

Senator DRAKE

- Where it will become positively mischievous will be in cases where we have two or more cable services and the published rates are equal. The disadvantage will be that a provision of that kind will enable persons to make private arrangements with the cable company to have their messages sent at a discount, and that I think will operate very prejudicially against the cable that is owned by the State. Of course what the honorable senator is looking forward to is the completion of the Pacific cable.

Senator Sir FREDERICK SARGOOD

-Yes.

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Senator DRAKE

- When it is completed it will be the first State owned cable from Australia, and no doubt it will be in competition with other cable services. An enterprise which is controlled by the State is necessarily conducted in the open day. The rates by that cable will be published. The rates by a cable which is controlled by a private company will not necessarily be made public, or if published there will be nothing to prevent its proprietors from allowing a considerable discount. If this sub-clause is put in it will enable a privately owned cable company to make arrangements with the users of the cable to send messages over their lines in preference to using the State line, by promising a certain discount. In that way the Pacific cable may be made unremunerative. If the cable rates are the same on each line, as they probably will be - because I cannot conceive for one moment that when we have two or three cable services, the Pacific cable, the Cape cable, and the Eastern Extension Company's cable - there will be any difference in the public rates, it will be all the same whether messages are sent one way or the other. What is the advantage of having this provision, that the sender may state the route by which he desires his message to be sent 1

Senator Sir Frederick Sargood

- Will the honorable and learned senator deal with the present position of matters. The other cable may not be completed for some years.

Senator DRAKE

- My information from the agent of the company is that the Pacific cable will be ready by next March ; it is therefore only a matter of a few months. At the present time I cannot conceive that any advantage is going to result to the public from this amendment. If messages are to be sent, it is desirable that they should be sent by the route which is most convenient.

Senator Sir Frederick Sargood

- To whom 1

Senator DRAKE

- To the Government which is controlling the matter, most assuredly.

Senator Sir John Downer

- To the Postoffice.

Senator DRAKE

- Why not? If there are several cables from Australia to Great Britain, and if the Post-office have the right to send messages by either route, what object is there in putting in this provision, which will enable certain interested persons to send messages by one route in preference to another, causing one line to be blocked while the other is lying idle 1 If the rates are the same the Post-office should have the right of sending messages by whatever route is most convenient.

Senator MILLEN

(New South Wales).Whatever doubt I may have had at first with regard to this matter has entirely disappeared after hearing the remarks of the Postmaster-General. He has furnished excellent reasons for adopting the amendment proposed by

Senator Sir Frederick

Sargood. The Postmaster-General states that the postal authorities should have the absolute' right of determining by which route messages intrusted to them should be forwarded, and he furnished some

reasons why his department should be placed in that position. But surely the honorable and learned senator has not overlooked the fact that that will place in the hands of the Postmaster-General an absolute power to shut up a private cable.

Senator Sir John Downer

- That is what is intended.

Senator MILLEN

- If it were really intended to do that, one could understand the insertion of a clause for the suppression of private enterprise entirely. But let it be an open clause, so that we may know what we are doing. Under the Bill as it stands, the Postmaster-General will be able to determine that, the rates being the same, all messages shall go by the State-owned cable. I am not sure that if the rates were different he could not insist that the messages should go by the State-owned cable.

Senator Sir William Zeal

- Supposing he does, what disadvantage is that to the public ?

Senator MILLEN

- The very disadvantage that the Postmaster-General himself has been careful to point out, that the State owned cable might be choked with business, while the other lines were lying idle. In order to carry out this policy of State ownership of the cable we might have the post-office forcing all the business over one line to the disadvantage of the others; In this way the department would be able to say that private cables should not be allowed in Australia. We should leave it to private individuals to say to whom they will intrust their messages. If they were allowed to do so, what harm could result ? Why should not every person who wishes to send a cable message be able, to decide by which route it shall be transmitted ? It seems to me that we should do one of two things, either determine to stop privately-owned cables altogether, or else leave every man who wishes to send a cable message free to select the route by which his message shall be transmitted.

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Senator DRAKE

- It should be remembered that a State-owned cable is not in the same position as a privately-owned cable for the reason that the State-owned enterprise is conducted in the light of day. It has to publish its rates and it cannot allow any discount. One man has to pay the same rate as another. But a privately owned cable can make secret agreements with certain persons to take messages at reduced rates. If a proposal of this kind is allowed to go in the Bill it will mean that the private cable company will be able to make such arrangements with the public as will enable it to obtain all the cream of the business, and the State owned cable will have to carry such messages as come to it at its published rates.

Senator Sir FREDERICK

SARGOOD (Victoria). - What the Postmaster-General seeks to do is an impossibility. It simply means this : That the merchants of New South Wales, and, I think, of Tasmania also, will have to do what the merchants in Victoria have done for a considerable time past - send their cablegrams to Adelaide to be forwarded on by the Eastern Extension Company.

Senator Sir William Zeal

- Why has that been done ?

Senator Sir FREDERICK SARGOOD

- Because the cost is so much cheaper that way.

Senator Sir William Zeal

- But it has not been so for very long.

Senator Sir FREDERICK SARGOOD

- No, but it has been costing Victoria nearly £1,000 per week.

Senator Drake

- And it will not be so for much longer.

Senator Sir FREDERICK SARGOOD

- It must be so in the meantime ; and in any case so long as the Eastern Extension Company have the right, and I hope they will always have the right, of sending telegrams from Adelaide, this practice will continue. The Postmaster-General is simply piling up trouble and expense unnecessarily upon the mercantile community of Australia. That is the position I take up. My own firm and a number of other firms

- I believe I am right in saying also a large company of which Senator Sir William Zeal is chairman - does the "same thing.

Senator Sir William Zeal

- That does not prove that it is right.

Senator Sir FREDERICK Sargood. I am perfectly aware that neither the honorable senator nor myself is always right. But I say strongly that those who wish to encourage freedom of intercourse should not allow this monopoly to be taken by the Postoffice.

Senator Sir JOHN DOWNER

- As far as the cable communication exists at the present time, or has existed in the past, it has been due to private enterprise. The argument of Senator Millen appears to me to be absolutely unanswerable. If the Postmaster-General means to make a declaration that all the cable business shall be owned by the Government and that no private company shall be allowed to have a share of it, we can discuss the matter on that basis. The Postmaster-General says that the general public must not be allowed to say by what route they shall send their messages. If the rates are unequal, that will adjust itself. No injustice is done, because the man who pays the lower rate will have his cablegram sent over a line to which that lower rate is applicable as a matter of course. But the difficulty, says the Postmaster-General, is when the rates are equal. I want to know why the Government has any possible right to a monopoly which is to kill a private line? The reason given on the face of it is an answer to the argument itself - because people who send telegrams might make arrangements with the private companies to send them at a lower rate than the Government would charge. So much the better for them if they do.

Senator Drake

- But not for the general public.

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Senator Sir JOHN DOWNER

- Are these cable lines established for the purpose of helping the Government, or of helping the people? Are messages to be sent at the lowest possible rate, or at the highest possible rate? Is the cable service to be a revenue-producing department or merely an adjunct to the public convenience? If the Government cannot send their cables at the same rate as private people let them stand aside and admit that they do not understand the business, leaving it to be conducted by those who do understand it.

Senator CLEMONS

(Tasmania). I intend to support

Senator Sir Frederick

Sargood in his amendment. If the arguments he has used are not sufficient and satisfactory, any supplement to them that is necessary has been furnished by the Postmaster-General himself. It seems to me that the statement the Postmaster-General has made supplies an excellent reason for supporting the amendment. It might occasionally occur to us that incidentally we are legislating for the convenience of the public. The Postmaster-General has practically suggested that we are legislating against the convenience of the public.

Senator Drake

- No, in the interests of the public.

Senator CLEMONS

- I say that the amendment is distinctly in the interests of the public.

Senator Drake

- No.

Senator CLEMONS

- Senator Sir Frederick Sargood's contention is that the public should have a right to select by which line they should send their messages, and that is a sound ground to take up. I hope that the honorable senator will press his amendment, which I shall support.

Senator MCGREGOR

- I should like to call the attention of honorable senators to what they have already done in connexion with the Bill under discussion. They have given the Federal Government a monopoly in reference to the carriage of letters. The arguments that have been so ably used by Senator Sir John Downer, Senator Sir Frederick Sargood, and others, could have been as well used for contending that we should allow a

private individual to start a post-office in Melbourne, and carry letters to the Northern Territory in opposition to the post-office.

Senator Millen

- We have not a monopoly over the ocean.

Senator McGREGOR

- If the honorable senator will restrain his impetuosity for a minute or two we may arrive at some conclusion. The Postmaster-General's objection to the amendment simply is that he wants to maintain the Government monopoly in connexion with cable communication as well as in regard to postal matters, and he wishes to leave it to the Government itself to make arrangements with the private companies. Here we have a private cable company with which the State Governments formerly, and now the Government of the Commonwealth enters into an arrangement to give a subsidy of from £50,000 to £200,000 or £300,000 per annum.

Senator Keating

- That has been ignored very carefully.

Senator McGREGOR

- The honorable senators who support this amendment have never said a word about that. Now in comes Senator Sir Frederick Sargood - and I am glad to find that his friend, Senator Sir William Zeal, takes a different view altogether - and points out clearly what private enterprise wants to do. He says that the private companies are going to give special rates to mercantile men, -and he asks why they should not be allowed to send messages at cheaper rates than the Government? Suppose that the Federal Government laid down a cable to Tasmania, or to the Cape of Good Hope, or any other part of the world, and there were private lines in existence which conducted their business for the purpose of damaging the interests of the Commonwealth line and destroying any revenue that it was clearly, entitled to on account of the expenditure it had incurred. Suppose then that these private companies went to the business firms and said - " We will take your messages at cheaper rates than the Government charge." Then as soon as ever the private firms had knocked out the Government line, up would go the rates again. The Eastern Extension Telegraph Company has been subsidized by the Governments of Australia, and now it is to be used to help to defeat an enterprise entered into by the people of the country. I hope that honorable senators who have the interests of the Commonwealth at heart, will agree with the Postmaster-General and reject the amendment. They surely will not for the sake of a temporary advantage, which might exist only for a couple of months, allow the public to be eternally fleeced.

Senator WALKER

- It seems to me that this clause introduces the question of Free -trade versus Protection ; and as I am a free-trader, I think I am consistent in supporting Senator Sir Frederick Sargood's proposal. We have not a monopoly on the ocean. It is all very well for Senator McGregor to talk about our own telegraph lines, but are we to submit to a monopoly by the Government by subsidizing one company at the expense of another?

Senator Sir William Zeal

- That is not the case.

Senator WALKER

- With all due deference to the honorable senator I think it is. If we are going to subsidize only one company, and if the Postmaster-General is going to compel us to send our messages over the line subsidized by the Government from where is the other company to receive its support?

Senator Sir William Zeal

- But in one case the cable belongs to the Government and in the other it does not.

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Senator Drake

- There will probably be work for both of them.

Senator WALKER

- Senator Sir Frederick Sargood will support me in saying that even if we do not carry this amendment we shall still be able to arrange, notwithstanding this objection on the part of the Government, to have our telegrams sent through agents. These agents take our ciphers and send our messages at small expense. We can send in one cipher message what would require 100 messages if sent in the ordinary way. If we

transmitted our cable messages through these agents the Government would find that they could not charge so much for the one as they could for the hundred. Let us have as much and as cheap cable communication as possible with all parts of the world. I am strongly of opinion that we should act wisely in accepting the amendment.

Senator O'KEEFE

- I intend to vote against Senator Sir Frederick Sargood's amendment. The State I have the honour to represent has the misfortune to suffer more than any of the other States in regard to its telegraphic communications. I think that before very long there will be a desire on the part of the Commonwealth that the Government itself, if it cannot acquire the cable between Tasmania and the mainland at a reasonable rate, shall construct a line. If this amendment were carried the hope of placing Tasmania on the same footing as the other States in regard to this matter would be a very remote one.

Senator Clemons

- Not at all.

Senator O'KEEFE

- It certainly presents itself to me in that light. It may be a selfish light in which to view the matter, but I think we are quite justified in looking at it in that way. I fail to see the great danger of the monopoly that has been referred to, seeing that it is going to be a Government monopoly - if it is to be a monopoly at all. In view of that fact, I do not think we should have such regard for the vested interests of the syndicate cable lines. We should rather have greater regard for the rights of the Commonwealth.

Senator CHARLESTON

- I should like to ask the Postmaster-General whether he has considered the effect which his proposition will have upon the State-owned telegraph line of South Australia. It seems to me that if the Postmaster-General has his way his proposal will practically destroy the usefulness of that line.

Senator Drake

- Do I understand the honorable senator to be referring to one of the land lines?

Senator CHARLESTON

- Yes, I am referring to the line running from Adelaide to Port Darwin.

Senator DRAKE

- I cannot see how this amendment will affect that line in the slightest degree. I fail to see how it will affect any of the land lines. As I understand it, at all events, it is not intended to do so.

Senator Sir Frederick Sargood

- Not directly, but it would indirectly.

Senator DRAKE

- I cannot see how it could affect the land lines, either directly or indirectly. If there are two routes I think the Postal department the very best authority to decide over which route a message should be transmitted.

Senator Clemons

- Irrespective of rates?

Senator DRAKE

- Decidedly. If there were two competing lines, and they were owned by different States, no doubt each State would like the message to go over its line. Surely, however, the Post-office should decide. In arriving at a decision, it would consider the public convenience, and it would send the message over the route that was least blocked. The question of allotment of revenue does not arise in connexion with this matter. In a great many cases we can send messages to one particular town over three different routes. We simply keep the three lines as busy as we can, and send the message by the route most convenient. If this amendment were intended to apply to land lines the absurdity of it would be seen at once. If a man wishes to send a telegram to Ballarat he does not prescribe the route by which it shall go. A message to that city can be sent through two routes, and the Postal department send the wire over the line that is least busily employed.

Senator CHARLESTON

(South Australia). - The Postmaster-General must know that the South Australian State-owned line connects at Port Darwin with the Eastern Extension Telegraph Company's cable. Therefore, in referring to the land lines, we are practically speaking of the ocean lines as well. I see that

Senator Playford

is prepared to speak on this subject, and as I know he is thoroughly conversant with it, I will give place to him.

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Senator PLAYFORD

- I think we ought to deal with bur telegrams in the same way as we do with our letters. That is a proposition with which I think every honorable senator will agree.

If we allow a man to have a letter sent by a particular route' simply by marking on it "mil Brindisi" or "via San Francisco," surely we ought to allow a similar privilege to the man who sends a telegram.

Senator DRAKE

- Is that done now ?

Senator Sir Frederick Sargood

- Yes.

Senator Drake

- When there is no difference in the rates 1

Senator Sir Frederick Sargood

- Yes, it is constantly done.

Senator Drake

- All the worse for the public.

Senator PLAYFORD

- The question as to private companies' rights in regard to telegrams is quite distinct from the Post office. My point is that we ought to allow a man who sends a telegraph message the same privilege as the man who sends a letter. If sx man indicates the particular route by which he wishes to have his letter sent, the practice in England and South Australia is to give effect to his wishes as expressed on the cover of his letter. What Senator Sir Frederick Sargood desires is that when a man wants to send a telegram to Europe by a particular route, and indicates that particular route, his wishes should be carried out. I think that is a very fair proposition. The question raised by Senator Charleston relative to the overland line from Adelaide to Port Darwin is a very serious one so far as South Australia is concerned. The proposal made by the Postmaster-General would enable him to send the whole of the messages by the Pacific cable as soon as that cable is constructed. FOr five years South Australia has to bear any loss upon its postal and telegraphic services. So far as the telegraph line across the continent is concerned, I may state that we have expended over £600,000 upon its construction. No doubt South Australia will be recouped for that outlay at the end "of five years. South Australia- has reduced the rates on the overland line to such an extent that she has spent upon it over £300,000 above the receipts. Of course, this was done particularly for the benefit of her own people, but to a very great extent for the benefit of the people of the whole of the continent, because the population of South Australia is small in comparison, and consequently its telegraph messages are considerably less numerous. We have done all this, and yet if the Postmaster-General has the right to send messages by the Pacific cable and to ignore the land line altogether the receipts from that line will practically fall to zero. Except for messages to eastern parts, such as to Hong Kong and Singapore, there will be no receipts from the line at all, so that the loss to South Australia will be very heavy indeed. Of course, at the end of the fifth year, when the whole thing is taken over by the Commonwealth, the loss, will be borne by the several States. On this, line, which we have constructed in conjunction with the Eastern Extension Company, for the benefit of the whole of the people of the continent, we will suffer most serious loss if this power is placed in the hands of a Postmaster-General who may be hostile to us, and who may have special interests in the Pacific cable. Such a Postmaster-General would do everything that lay in his power to send oil messages by that line, and to ignore our own South Australian line, sa that the finances of that State would be in a rather serious position. Some honorable senators have asked why we should not. utterly ignore the Eastern Extension Company. It must be recollected, however, that the Eastern Extension Company laid their cable and placed us in immediate communication with Europe and the rest of the world at a time when we were not able to do it for ourselves.

Senator Keating

- But what did they do it for?



Senator PLAYFORD

- To make money out of it of course. People are not 'philanthropists in business matters. I do not suppose any honorable senator becomes a shareholder in a company except upon business principles. The Eastern Extension Company took a certain amount of risk at the time because it was not known that we were-' going to grow as rapidly as we have done, and there was much doubt as to the amount of 'business that was likely to be done.

Senator Charleston

- They helped us t&lt;r grow.

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Senator PLAYFORD

- They came to us-' and told us what they would do. They asked a certain subsidy as an inducement for laying the line, and the States willingly agreed to their proposals. The subsidy has since been increased or decreased according to circumstances. When they have lowered the rates they have asked the States to increase the subsidy in order to make up the difference and free them from loss. The whole thing has been purely a business transaction between the States and the company, and the company has kept to its engagements honestly. The company having come in at a time when we were not prepared to bear the expense of joining Australia to Europe by cable, I do not know that it is fair on our part now to say that we will not encourage them in the future, and to say we will do all that we can to prevent them from having trade with this country. They are entitled to a ' fair amount of consideration. If this amendment is not carried, and if the Postmaster-General chooses to exercise his powers in the direction I have indicated, he will inflict considerable hardship upon the State that least deserves it. As in postal matters we allow' a man to say by what route his letters are to be carried, by parity of reasoning we should also allow a man who wants to send a telegram to say by what route his telegram shall be sent.

Senator Sir WILLIAM ZEAL

- The argument put forward by Senator Playford should commend itself to the committee - that South Australia has shown a great amount of enterprise in constructing a telegraph line across the continent - but I put it to Senator Playford whether in a federation such as we have now, carried on by responsible government, the Government is likely to go out of its way to injure any one of the States. I say that directly the contrary would be the case, and this overland line of South Australia is not at all likely to be handicapped by the Commonwealth Government to the extent Senator Playford has- suggested. His fear is altogether illusory. Another point to which I wish to direct the attention of honorable senators is the great advantages which will follow from our having a duplicate cable between Australia and Europe in the case of war. That has been pointed out again and again by persons coming here. We know that even ten years ago representatives were sent over from Canada and from other places to negotiate with us with a view to the construction of what is called the Pacific cable, and it was pointed-out that if what was proposed was to be done the cable must be subsidized by the different Governments. Now, what are honorable senators proposing to do ?. They are proposing to handicap that Pacific cable, and to permit all the mercantile community - I think I may use the argument - to enter into an arrangement with a private company to deplete the Treasury of its proper assets.

Senator Drake

- To take the cream of the trade.

Senator Sir WILLIAM ZEAL

- The honorable and learned senator, Sir John Downer, laughs, but I am speaking of what I know.

Senator Sir John Downer

- It only means that we do not agree.

Senator Sir WILLIAM ZEAL

- The honorable and learned senator has had no experience of these discounts, and does not know anything about them. He, as a legal gentleman, has no doubt a great knowledge' of the law, but he has no great knowledge of the working of great commercial enterprises. I say that in this matter the Government are entitled to consideration, and it lies in the mouths of those who advocate an alteration of the Bill as submitted by the Government to show that some manifest public advantage will accrue to the Government by their proposed amendment. If the Postmaster-General's argument is worth anything at all, it means that the clause will enable the Government to have a monopoly, and that is a matter which will

commend itself to the serious and earnest consideration of honorable senators. It appears to me that it is reasonable. We have been told a great deal about the generosity shown lately to these States by a certain company. What is the reason for that generosity?

Senator Barrett

- Because we are going to have another cable.

Senator Sir WILLIAM ZEAL

- It was only when this rival scheme was launched that we heard anything at all about it.

Senator Drake

- That brought the rates down.

Senator Sir WILLIAM ZEAL

- I remember not ten years ago when the Tariff was up to from twice to three times what it is now, and will any honorable senator attempt to argue that any generosity was shown then?

Senator Millen

- We want the generosity extended and continued.

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Senator Sir WILLIAM ZEAL

- I am with the honorable senator, but we want it extended on fair business lines, and we do not want to hamper the Postmaster-General in such a way that he would be unable to carry on his department on fair business lines. Suppose there was a conspiracy on the part of the whole mercantile community to send all their cables by a certain route, what would then become of our subsidized Pacific cable? If anything of that kind were permitted we should have to bear a heavy loss every year. Sir John Downer speaks on this question from a local standpoint, having reference to the South Australian overland telegraph line; but we can speak on the subject from a purely impartial point of view.

Senator Sir John Downer

- I am speaking from the stand-point of those who have paid for it, and the honorable senator is speaking from the stand-point of those who have not paid for it.

Senator Sir WILLIAM ZEAL

- I would ask the honorable and learned senator who has paid for the overland line. The State of Victoria has paid £10 for every £1 paid for it by the State of South Australia, and the compliment is all on our side. I have yet to learn that it was only within the last few months that this great concession was made.

Senator Walker, talks of protection and free-trade, but it seems to me that in this matter free-trade is with the Postmaster-General, because Senator Walker wants to give a private company a monopoly.

Senator Millen

- No.

Senator Sir WILLIAM ZEAL

- I hope the honorable senator will allow Senator Walker to speak for himself. He is not responsible for Senator Walker's utterances. I have every desire to help the State of South Australia. I believe she has acted nobly in this matter, but there is not the slightest fear that the Government of the Commonwealth will do any injury to South Australia. I would be the last to do anything which, directly or indirectly, would throw a burden on South Australia which she is not competent to bear; but on the other hand I would say to honorable senators: Do not embarrass the Postmaster-General by altering this Bill without being sure of the ground upon which we are to tread.

Senator MILLEN

(New South Wales). - Probably, though

Senator Zeal

resents my Speaking for

Senator Walker,

he will not resent my saying a few words for myself. A great deal has been said about monopoly, but I take it that what the Postmaster-General desires to do is to establish, at any rate, the right to create a monopoly. On the other hand, we do not ask for any monopoly for private individuals, but we say that where they establish a cable service it should be placed on exactly the same level as the State-owned cable, and senders of messages should be allowed to take their choice between the two. In speaking of a monopoly, some senators appear to have overlooked the fact that there is the widest possible difference

between land lines in a territory absolutely owned and controlled by the federal authorities; and a cable which runs through territory beyond' their control. The Postmaster-General mentioned the case of three telegraph lines from one town, and said it would be absurd to allow the sender of a message to such a place to indicate which line he preferred to have it sent by, but the honorable and learned senator forgets that in that case the State rates would be the same for one line as for the other, and that there would be no objection to picking a particular line. There would be a very big difference, indeed, if there were varying charges for the different lines.

Senator Drake

- It would not be necessary in that case, because if there were different charges, the man paying the higher charge would in that way select his line.

Senator MILLEN

- Suppose a private company was prepared to send messages for 2s. 6d. a word, and the State wanted to charge 3s. 6d. a word, under this clause as it stands at present the Postmaster-General would have the power to force the sender of every message to use the State line, though he would have to pay a higher rate than if he made use of the private line: Yet, we are told that we seek to establish a monopoly. I venture to say, that 'we would create under this Bill a' monopoly similar to that which our friends from Tasmania seek to-day to escape from. They complain of a monopoly that exists, and they seek for some way by which they may absolutely break it down.

Senator Lt Col NEILD

-Col. Cameron.- That is what we want.

Senator MILLEN

- Yes, but the honorable senator does not want to set up another in its place.

Senator Stewart

- There is a difference between a monopoly you control and a monopoly that controls you.

Senator MILLEN

- I venture to say, that if we pass this Bill as it is, we will be establishing a monopoly over which we will have no control.

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Senator Lt Col NEILD

-Col. Cameron. - No, the department will always be responsible.

Senator MILLEN

- Suppose the federal authorities construct a cable to Tasmania, and propose to charge 2s. a word, when the present charge is, let us say, 2s. 6d. a word, and suppose the owners of the private line are prepared to take messages for 1s. a word.

Senator Lt Col NEILD

-Col. Cameron. - There is not much likelihood of that.

Senator MILLEN

- If there is no likelihood of the Postmaster-General using this power there is no need to give it to him.

Senator Lt Col Cameron

- We can bring him to heel if he does wrong.

Senator MILLEN

- We have heard a lot of these remarks about being able to bring people to heel, but we know that when we place any one in a position of power, there is always growing an appetite for more power. We see that throughout the whole of this Bill The officials of the department are trying now to gather more power than I, at any rate, feel disposed to give them. With regard to the federal authorities paying a subsidy, the argument on the subject appears to me to be idle, because we cannot imagine the State undertaking the construction of a cable and continuing to give a subsidy to a private line to compete with it. If we want private enterprise to be shut out altogether, let us say so openly and above board, and let us paste a notice up at all the ports of Australia that we intend to do that. We will then have some justification for the monopoly, but what guarantee will we have that we shall be able' to get our messages delivered on the other side of the world? Our monopolies must cease with- our border lines. It is idle to talk of establishing a monopoly over a cable which touches other shores than our own.

Senator DRAKE

- I am not prepared to agree altogether with Senator Millen that the principle of the State ownership of telegraph lines ceases with our shores.

Senator Millen

- I did not say that the principle of State ownership would cease there, but that our absolute monopoly would cease.

Senator DRAKE

- Very well, our absolute monopoly. I do not see why the transmission of telegrams by cable should not be as much a State monopoly as the transmission of messages by land. I do not assent to the honorable senator's proposition. There seems to me to be no necessity for extreme illustrations as to how this would work, because we know exactly what would happen. Suppose we have two cables from here to Great Britain. We have a published rate of 2s. 6d. a word, and a private company advertises that it will carry messages at the same rate.

Senator Millen

- It is 2s. a word.

Senator DRAKE

- What difference does it make whether it is 2s. or £2 % I am supposing we have two cables - one privately owned, and one owned by a number of States, or by Great Britain, Canada, and the Commonwealth of Australia. We have published our rate as 2s. 6d. a word, but the difference is that the two cables are not on the same footing, for this reason, that the Government publishing its rate must stand to that rate, and cannot give any private discount. Everybody has got to pay the 2s. 6d., but a privately-owned company can publish its rates and then give heavy discounts. It can pick its business, and say to certain firms- - " If you agree to send all your business over our cable we will allow you 20, 30, or 50 per cent, discount." In that way they would be able to keep their cable always busy and leave the other cable comparatively idle. If we are to have two cables--

Senator Walker

- Subsidize each.

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Senator DRAKE

- The business of subsidizing has not worked well in the past. I think that in the past we have paid very much more than we should have paid for our cable messages, and the sole reason that rates have been reduced lately is the anticipated competition of the Pacific cable. It is that which has brought the rates down, and so surely as this monopoly is able to destroy the State-owned cable so certainly will the rates go up again. It is the duty of every one who desires to get the cable rates permanently lowered to see that nothing is done which would injuriously operate against the Pacific cable. With regard to Senator Playford's illustration as to posting letters via Brindisi or via Torres Straits, there was once a reason for doing that, because the postage rate was regulated by the route by which the letter was to go. In some cases a letter could be sent for 4d. by one route, but if a 6d. stamp were put on the letter, and it were marked to go via Brindisi, it went more quickly. Where the analogy absolutely fails is that in the case of a letter no one will make a secret profit out of it. The fact of marking a letter to go by any route does not put money into the pocket of any person, whereas the sole object of this amendment is to enable a particular company which has a cable to insure that messages shall be sent by that route for its own profit. I do not think I am unfairly stating the case.

Senator PEARCE

- The amendment resolves itself into the question of whether we are to allow the Telegraph department to be controlled by its customers or by its official head? If senders have the right to say by which route their messages shall go, and there are alternative routes, then certainly the control is taken out of the hands of the department. When we look at the clause in the light of the fact that there will be a State route, or what is known as the Pacific cable, the argument of Senator Playford in dealing with the South Australian land line loses much of its force. The action which he pictures an imaginary Minister as having taken would be the action of a person who wanted to ruin his own business. Certainly for five years South Australia would have to bear the loss, but the ultimate loss would fall on the Commonwealth. Will he say that the Minister, for the purpose of benefiting the Pacific cable for five years, is going to ruin the overland line in South Australia? We have in Western Australia a line to Broome. I am certain that for the convenience of the

department in that State, the Deputy Postmaster-General will continue to send a considerable number of messages to Banjoewangie. The Deputy Postmaster-General of South Australia very likely will send all the messages he receives by the overland route to Port Darwin. When we have the Pacific cable, it is possible that the Deputy Postmasters-General of New South Wales and Victoria may find it convenient to send some of their telegrams over that route. I do not think it can be soberly stated that it is for the purpose of crushing other lines out of existence that we are asked to give this power to the Minister. For the proper working of the department, he requires the power to send these messages by whichever route is convenient, and the right to select the route should not be given to the customers. For these reasons I intend to support the attitude of the Minister. As regards sending a letter by whichever route we wish, I would point out that in the case of a letter, a man has not an alternative as to whether it shall go by a private route or by a State route, and, further, the cost of the postage-stamp goes to one person - the Postmaster-General - in every case. In the case of cablegrams we pay on the one hand the Minister, and on the other a private company, and that, in my opinion, marks the distinction between a letter and a telegram in that respect.

Senator Lt Col CAMERON

- I wish to make a few remarks on this question, not so much from a business as from a national point of view. It is to begin with a question of pounds, shillings, and pence ; and, secondly, a question of whether it is of national importance that we should have a second line. In the first place, if the second line is not to be a paying line, from any causes which may eventuate from the people of the States, then I hold that it need not be taken into consideration. But if it is likely to pay, and I understand that we are practically pledged to give some assistance to a line viâ Canada; then I hold that, instead of one line having the monopoly, through some combination of business people, there should be an equal amount of advantage given to both lines. There is a far more important matter to be considered, and that is the importance of a second line from a national point of view. This second line will give us communication with the dominion of Canada, and direct communication with the mother country through Canada. Practically it will be a British-owned, and a British-utilized line with a small risk in time of war of its being destroyed and our being cut off. Consequently that ought to weigh with honorable senators just as much as the importance of the line from a commercial point of view. I shall support the clause.

Senator McGREGOR

(South Australia). -Of course, when the debate commenced on the amendment, I, although representing South Australia, considered that we were discussing the benefit of the whole Commonwealth. I shall never put something which is in my State as a buffer between some private monopoly and the welfare of the whole community. My fellow senators from South Australia view the question from a different stand-point, and I can only attribute that to a want of the federal spirit which ought to exist in them. These honorable senators talk about our transcontinental line being ruined. In what ? In the interests of Australia.

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Senator Playford

-And South Australia will have to pay the piper.

Senator McGREGOR

- South Australia is never going to pay the piper.

Senator Playford

- Is not she? Wait' for three years, and see.

Senator mcGregor

- Every honorable senator knows, or ought to know, that all these tilings in connexion with. this department will belong to the Federal Government.

Senator Playford

- Nothing of the sort, the line will belong to South Australia.

Senator McGREGOR

- I am surprised at the honorable senator. A few minutes ago he said that for the first five years any surplus would be credited to South Australia, and of course any deficiency would be debited to it. I have no fear that within that period any Postmaster-General will treat his own property and the interests of the Commonwealth in such a manner as to allow South Australia to suffer. It would be unfair if he did. I am

sure no matter what State he represented the Senate would not hesitate to bring any Minister to book who attempted to do such a thing.

Senator Charleston

- How are we going to know it?

Senator McGREGOR

- Is not the return going to be laid annually before Parliament, and would the honorable senator be doing his duty to his State if he did not take such an interest in the return as to see that South Australia was not unjustly treated ?

Senator Charleston

- The return could not give all the details of that.

Senator McGREGOR

- It would give details enough, and if it did not we could soon see that it did. With regard to sending letters by this route or that route, I am sure that Senator Playford has had sufficient explanation to see that there is no analogy between that and that which the Minister is contending for. On the other hand, many letters are marked to go by a route because a mail may be going earlier by that route than by another. We are endeavouring to give the Minister an opportunity, in the interests of all Australia, to get as many lines as possible to all parts of the world and to have them all under his control.,, This is simply a question of private individuals dealing with separate companies, or the postal authorities dealing for private individuals with all companies. That is the position I take, and I hope I shall never be so provincial in my ideas as to allow a State interest that does not exist to stand between what is just to the whole Commonwealth and any fear that might be in my mind.

Senator Playford

- How can a thing which does not exist stand between two other things ?

Senator Sir FREDERICK

SARGOOD (Victoria). - We must be all agreed, I think, as to the advisability of the Pacific line, and I entirely concur in the remarks made by

Senator Cameron

as to the advantage of that line from the defence and from other points of view. For fifteen years or more I have taken an active part in connexion with promoting that line, and I shall be only too glad when it is finished. I must confess that I listened with astonishment to the statement of the Postmaster-General that it was expected that the line would be opened by March next. The route has not even been surveyed yet.

Senator Drake

- Oh, yes; the shore-end was brought out in the Britannia.

Senator Sir FREDERICK SARGOOD

- The whole of the route has not yet been surveyed, as the Minister will find. I should think that the survey of a deep-sea line was a very important and expensive process.

Senator Sir William Zeal

- Suppose it takes twelve months longer, what does that matter ?

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Senator Sir FREDERICK SARGOOD

-The Minister urged that there was no necessity to put in this amendment now, because we should have the Pacific line by March next, and I merely want to show that that portion of his argument was somewhat faulty. Then the argument of Senator Playford, I think, is worthy of grave consideration. There is no doubt, in my mind, that once the Pacific line is opened and it becomes a Government line, as it will, the tendency of the Post-office throughout the Commonwealth will be naturally to send as much business as possible by that line, and to that extent the transcontinental line in South Australia must suffer. Senator McGregor dwelt somewhat on the fact of benefiting the Eastern Extension Company's line, and, perhaps, Senator Cameron overlooked the fact that we have two lines, and that the Pacific line will be a third one. What is the position of the Eastern Extension Company's line ? We are subsidizing that line, and the more it earns the less subsidy we shall have to pay. The more business we take from that line and throw on to the new line, the more subsidy the Commonwealth will have to pay.

Senator Staniforth Smith

- When we get the Pacific line, surely we are not going to subsidize that line?

Senator Sir FREDERICK SARGOOD

- The contract has to run for a number of years, and we cannot get out of it. I am speaking of the Commonwealth in the fullest sense.

Senator Drake

- That will be an inducement to send messages by the Eastern Extension Company's line.

Senator Sir FREDERICK SARGOOD

- I grant that in the meantime the Commonwealth will not have taken over this line, but the existing States will have to pay, and in that sense the Commonwealth will have to pay. So that every pound we take from the Eastern Extension Company's line in order to give it to the Pacific line, will, to that extent, represent a pound which the Commonwealth will have to pay in increased subsidy. It is well that we should understand that, and not try to convince ourselves that by giving these facilities to those who send telegrams, we shall be benefiting only a private company. To a certain extent undoubtedly we shall, but we shall also be saving the Commonwealth an increase of the subsidy ; so that the benefits will be divided. Then I will point out to the Postmaster-General that it is utterly impossible to prevent this being carried out. It is true that by rejecting the amendment we can entail upon the commercial public some loss and inconvenience. I may say in passing, what is probably well known, that the vast bulk of the over-sea telegrams are sent by the commercial public, and surely it is advisable that we should do what we can to assist, not to throw difficulties in the way of our own customers. What is being done, and will be done by the commercial public, is that telegrams will be sent through Reuter's agent in Adelaide. The Post-office will thus lose this business altogether. The messages will, still go by the Cape route. The Postmaster-General cannot stop it.

Senator Sir William Zeal

- When the Pacific route is opened it can be stopped right enough.

Senator Drake

- If the department cannot stop it, why does the honorable senator want this amendment ?

Senator Sir FREDERICK SARGOOD

-Because it is not desirable that- the

Postmaster-General should put unnecessary trouble and expense in the way of his customers. The more we can do to facilitate rapid and cheap communication the better, bearing in mind that we do not thereby damage ourselves. Every pound we put into the existing line reduces the amount of the subsidy we have to pay. As to the statement of Senator McGregor, that the Eastern Extension Company has reduced its rates simply on account of the certainty of the Pacific line being constructed, I grant that there is some truth in that ; but we must remember that the company reduced its rates some years ago without any compulsion. This is not the first time the rates have been reduced.

Senator McGregor

- The company was ashamed to keep its rates so high.

Senator Sir FREDERICK SARGOOD

--I do not think that companies are ashamed of earning good profits. Bear in mind also that this company is under contract, not only in regard to its present reductions, but also to make reductions next year and the year after. Those reductions are part and parcel of the contract.

Senator Drake

- A contract with whom 1

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Senator Sir FREDERICK SARGOOD

- I think with the Imperial Government or with- the Government of South Australia. However, there is no possibility for the next two or three years of the company doing anything to increase its rates, and by that time we shall have the Pacific line in working order. Then the Commonwealth ought to be able to do the business as cheaply as any company can. I should be ashamed to think that the Postal department could not conduct its business as economically and satisfactorily as any private firm. I merely mention the matter of the reductions to show that there is no intention of killing the Government line and then putting up the price. Senator McGregor is not speaking within the bounds of practical business in making that suggestion. I can understand the Postmaster-General being anxious to stick to his Bill, and to obtain for his department all the powers he can get. That is very natural. But at the same time I confess that it is

very dangerous for the public as a whole ; because I do not care what department it is - whether the Postal department or any other - officials always like to magnify their offices, and rise from power to power. As a rule, the public suffer in consequence.

Senator Pearce

- How do the public suffer in respect of railway rates ?

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Senator Sir FREDERICK SARGOOD

- I can only say that if the railways could be leased to any private firm, we should find that both passenger and goods rates would be very much reduced, and the business very much better done.

Senator Sir JOHN

DOWNER (South Australia). - At the risk of being called provincial by

Senator McGregor,

I want to say another word. Of course, I can very well understand that the majority of persons in dealing with the property of others adopt a certain breadth of view with respect to the terms on which it is to be acquired. Their view is altogether different from that of the individuals who happen to own the property. I have resisted that view on the part of a certain section in politics before, and even at the risk of being called provincial I resist it now. We have a line of telegraph in South Australia that cost the Government of that State a lot of money, which some day we shall have to pay. In the meantime we have to carry on the line. We do not make anything out of it. It has always been conducted at a loss, but we want to work it at the least possible loss. We have been the benefactors of the whole Commonwealth of Australia in this case. We, a small State, undertook the work for the other States, who were timid and fearful. It is true that the others came to our help afterwards when there was no necessity, but they had not the courage to do the work themselves. Now we have to contend with a different state of things. We recognise, as

Senator Cameron

has put it, that we require another line of cable for other than merely mercantile purposes. It is to be used for mercantile purposes certainly, but also for military and naval purposes. It will be an advantage to have that other line. Well and good. The Commonwealth says that, and the little State of South Australia says - " We agree with you, it is a fine national feeling ; but how about us"

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The Commonwealth establishes a new line for military and naval purposes for the benefit of all Australia, but what is the Commonwealth going to do as far as South Australia is concerned

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All the messages from Australia may be sent by the new line, and none may be sent over the South Australian line. The result, as

Senator Playford

says, will be that South Australia will be subject to a disastrous loss for five years.

That "would be an unjust position. The answer is that no Postmaster-General would ever do it. Well, I do not know. I am an old Minister ; I have had more experience in politics than many honorable senators ; I have seen as many surprises in politics as most people, and I would rather be sure than sorry. I do not know what any Postmaster-General may or may not do ; but, even assuming that the Postmaster-General wants to do no injustice, an injustice may, nevertheless, be done to South Australia. Suppose the Postmaster-General happens to come from Queensland and has a prejudice in favour of the Pacific line of cable, in which Queensland is particularly interested - I am only putting a hypothetical case - there might be a tendency on his part to help that State rather than a State that was far off and of which he knew very little. These things happen, and will have to be provided for. But I am told that we ought to take up higher and national ground on this occasion. Senator McGregor and Senator Cameron take that view. Then I reply - "The Commonwealth may as well pay for your great national feeling, and you should not throw the expense on a small State and accuse people of being provincial because they happen to think that justice ought to be done, even if the Empire is in danger." There is another point which I wish to put to the committee again. Suppose that the hypothetical Queensland Postmaster-General gets his own way and establishes the Pacific line, and that certain rates are imposed ; and suppose that we in South Australia, working with the Eastern Extension Company, think we can do better by imposing lower rates ? Why should we not do so ? If we are not permitted to do so, let the Commonwealth take the thing out of



our hands and pay for it, and not leave us in the position of having to bear the expense, while the Commonwealth takes the business OUT of our hands and leaves us with a heavy loss which we have to liquidate. Senator Playford, who is an experienced Treasurer, says that it may mean a loss of £30,000 a year to South Australia through this deflection of business, in consequence of the erection of the new line. If the Commonwealth is going to leave South Australia with this possibility, we should have the chance of making the loss as light as we can. We have built this telegraph line with the approval of all Australia, and every one has benefited from it ; and why, in the guise of patriotism and high feeling, should the Commonwealth want to do this abominable injustice to that State? Why, when the bigger colonies refrained from doing the work themselves, should South Australia be subjected to a heavier loss than is necessary because she came to their help ?

Senator Sir William Zeal

- How could we do it?

Senator Sir JOHN DOWNER

- Having constructed this line for the benefit of all Australia, the least the Commonwealth can do, when it reaches this magnificent condition of patriotic feeling which requires another line to be constructed, is to take care not to make South Australia suffer ; which State at all events was guileless and innocent and intended no harm, but on the contrary, did good. I hope very seriously that those honorable senators who have spoken will reconsider the matter and support the amendment.

Senator DE LARGIE

- There is a growing feeling in this Chamber and elsewhere that South Australia in every bargain made between that State and the Commonwealth is not going to be behindhand, but is going to get the best possible terms for herself. I do not blame South Australian senators for speaking on behalf of their State. It is their duty. But it is only reasonable to expect that they will recognise that there are other States beside South Australia. We have heard so much of the Northern Territory telegraph line and of other white elephants in which South Australia is interested, that really we may be pardoned for thinking that that State is almost on the verge of insolvency. It seems to me, however, that in respect of Commonwealth affairs South Australia is getting on remarkably well, and is still going strong. That State is going for something more than she has already got. We, however, have to consider the interests of the Commonwealth as a whole. The desire of the Postmaster-General is to make the Pacific cable a commercial success. We are all anxious to see that result achieved. If it is to be a success the Postmaster-General must have the right of controlling the telegraph service, and not leave to Others outside the opportunity of getting the best of the department, and making bargains to suit themselves. The key-note throughout the whole discussion on this Bill has been that the telegraph service should be a State monopoly. If it is not to be a State monopoly, how is it to be a commercial success? And, if it is not to be a commercial success we should be foolish to allow the Commonwealth to be robbed of revenue to which it is justly entitled. If we are not to have a Government monopoly, the revenue will certainly decrease very considerably. We hear a great deal about loyalty ; but, I contend, that it is the duty of the people to be loyal to the interests of the Government, just as much as it is for them to talk of all this cheap loyalty in reference to the King, and that sort of nonsense. We have to be loyal to the Government and to the Constitution, and if we allow private individuals to make bargains, by which they will get the better of the services of the Government, we shall not be true to the interests of the Commonwealth.

Senator MILLEN

(New South Wales). The honorable senator, who has just resumed his seat, has made a statement which, I take to be an absolute declaration in favour of the establishment of a Government monopoly with regard to the projected cable. That is a definite statement which I can quite understand. It would have a great deal of force if there was no private cable in existence. As there is such a cable in existence, however, that declaration must mean that by some means or other the honorable senator proposes to prohibit business on privately-owned cables. I desire to ask the Postmaster-General a question. He stated a little while ago that a private cable company, having published rates equal to those fixed by the Government, might still in practice allow rebates. In that case he said it would be right to allow the Government to step in and exercise the power which the Bill gives the department.

Senator Drake

- If we could send a message at either rate there would be no rebate given.

Senator MILLEN

- If the owners of the private line proposed a public charge of two shillings and the State wanted three shillings a word, would the Postmaster-General still propose to compel private messages to be sent over the public line.

Senator DRAKE

- Certainly not.

Senator MILLEN

- Then why do the Government ask for this power ?

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Senator Drake

- We do not want the power to do that.

Senator MILLEN

- The Postmaster-General says that he does not propose to force people to send messages by the public cable at rates higher than those that are charged for sending messages over the private line. Yet that is what the Bill would allow the department to do if this amendment were not passed. If the Postmaster-General does not mean to do that, I will ask him to say when he replies, what objection he has to the insertion of the proposed additional sub-clause.

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Senator STEWART

- I intend to oppose Senator Sir Frederick Sargood's amendment. It appears to me that the honorable senator represents the commercial circles of Australia in this matter. The position seems to be this. For a number of years the commercial community have been labouring under the heavy exactions of private telegraph companies. They have agitated and agitated until a proposal has been brought about for the establishment of State enterprise, and now they wish to put the State enterprise and the private enterprise into competition with each other. That seems to be the position, as far as I can gather. In the case of State enterprise, we can fix the rates to suit the public convenience. If the rates are too high, we can lower them ; if they are too low we can raise them ; if the service is not expeditious, an improvement can be made. We have no control, however, over private enterprise. The only whip we can hold over it is the competition of a State telegraphic line, and that apparently is likely to have the effect of reducing the rates which, for a long period, have been charged by this private enterprise. No doubt they have made very large profits. They have put considerable sums to their reserve funds, and they are prepared to pay a little now to bring discredit on State over-sea telegraphic enterprise. I am not going to play into their hands at all. Whether any business goes over the State line or not we shall have to maintain it. The interest on the cost of construction will have to be paid, and the officials will have to be paid. The whole cost of carrying on the business of that line will be going on whether any messages are sent over it or not, and the people of Australia will have to pay. It appears to me to be more in the interests of the people of the Commonwealth, who will be called upon to defray the cost of maintenance, that their line should be used than that a certain section should be given advantages - for that is what it would amount to - at the expense of the whole community. I am inclined to support the honorable and learned gentleman in attempting to bring about a tiling of that kind. It appears to me that we ought to support the Postmaster-General in the position he has taken up. The honorable senators from South Australia appear to be very apprehensive of injury to that State in connexion with this matter. I do not suppose that any one desires to inflict an injury upon South Australia or upon any other State in the Commonwealth. As I listened to Senator Sir John Downer's argument I was forced to the conclusion that, if carried to its logical issue, it was an argument against the Pacific line itself. If the Pacific line is established a certain amount of traffic must necessarily, in any circumstances, go over it, and the business of the transcontinental line will be lessened by so much. We are all grateful to South Australia for her philanthropic efforts to provide telegraphic communication for the people of that State and the rest of Australia. But South Australia must yield to the pressure of circumstances just as we all have to do. The teamster in the back blocks provides himself with bullocks and horses,, but the railway comes along and deprives him probably of his means of existence. He has to give way to the new conditions, and so it must be with South Australia. If the Commonwealth as a whole can be better served by means of the Pacific cable than it has been hitherto by means of the Eastern Extension line, combined with the transcontinental line, South Australia must

accept the position. We do not wish South Australia to be at any loss. I am certain that a very large proportion of the business will go over the transcontinental line, but in any case I think it is better that the line should be in the hands of the Postmaster-General, and that he should have the power to say whether a message should go over it or not. The decision as to whether a message should go over that line or not should be in the hands of the Postmaster-General rather than in the hands of any private syndicate. I think that even from that point of view South Australia is more likely to be bettered than if the entire control were in the hands of a private company. With regard to the question of charges, several honorable senators have pointed out that a private company might be willing to carry messages at very much lower rates than the State. It does not matter, however, what rates are charged upon our telegraph lines ; the people of the Commonwealth have to pay them. If the commercial classes get their messages over one line cheaply and the community as a whole has to keep up another line in idleness, then it is much better for the community as a whole to pay the higher rates upon its own cable than that a certain section should have the benefit of low rates over another one. In the end the people have to pay, and it is much better that we should pay ourselves, so to speak, rather than that we should pay some one else.

Senator CHARLESTON

(South Australia). - I am also one of those who are not afraid of being called provincialists in this matter. I look upon this proposal as a very serious attack upon the line which is already constructed, and which has been of such great service to Australia. We have heard a great deal this afternoon about the high rates that were charged by the Eastern Extension Company, and how they were ultimately reduced. It was quite natural, however, when they had to work an expensive line with very little traffic over it that they should charge high rates. With the aid of the cable communication established between Australia and Europe and America, Australia has largely benefited. We have increased our trade and commerce ; and we have increased our population, with the result that greater trade has been done. In this way the company's business has been increased, and they have been enabled to reduce their tariff. Such a thing naturally follows in all cases. As statesmen we have felt the need of other cable communication. We have felt that Australia ought to be connected with the old world by two lines, and that if we had one which passed through British territory alone, we should be on much safer ground in the case of a European war, or an occurrence of that kind. If, then, Great Britain, Canada, and the Commonwealth of Australia decide upon constructing a cable, well and good. There are certain reasons why that course should be adopted. We approve of the line being constructed, but to say that, because we believe it necessary that there should be a line passing through British territory alone, we should practically close up other lines is another matter.

Senator Sir William Zeal

- But we are not asked to say anything of the sort.

Senator CHARLESTON

- Unless we carry the amendment proposed by Senator Sir Frederick Sargood we shall place a power in the hands of the Postmaster-General which will be unjust, and we shall inflict an injury upon the Eastern Extension Company, as well as upon South Australia, for which we have no justification. There is no man in this State who has given greater thought to the subject than Senator Playford. The honorable senator was a member of the Ottawa Conference, and during his years of service in London for South Australia he had a great deal to do with cable communication between Australia and the old world. Senator Playford has clearly pointed out that if we allow the Postmaster-General to have this power we shall inflict a very great injustice upon South Australia. Some honorable senators argue as though we had passed the period of five years, and were now taking the full responsibility of everything in the Commonwealth. If we had passed over the five years the whole of the loss sustained by the telegraph line would fall on the whole community, and there might be something in the honorable senator's arguments. But, instead of that, South Australia must bear that loss for five years; and, seeing that she has always been ready to meet the demands of the commercial people of Australia, and, in conjunction with the Eastern Extension Company, has reduced rates in proportion to the business done--

Senator Pearce

- The loss cannot commence until the Pacific cable is completed.

Senator CHARLESTON

- Then let us not ask for the power until then. I say that under this clause the Postmaster-General would

be in a position we ought not to place him in if we do not want to have an injustice done to South Australia.

Senator McGregor

- The Postmaster-General is not going to inflict any injustice.

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Senator CHARLESTON

- We are not so sure of that ; and I am one who, with Senators Downer and Playford, will not put it in his power to do so. Senator Stewart has said that South Australia must suffer if she stands in the way of progress, but we are not standing in the way of progress. All we are saying is that, when the Pacific cable is established, those desirous of sending cable messages should be allowed to say on which line they prefer to have their messages transmitted. If I understand anything at all of socialism the socialist is prepared to bring the State openly and boldly into competition with private enterprise. If the State, cannot do work as cheaply as private enterprise, then in the interests of the community private enterprise must do that work. But I for one believe that the State is always able if work is done rightly, and as it ought to be done, to compete successfully against any private enterprise. When it is said that the State will not be able to compete with a private company, I ask how is any private company going to fight against the State when the State, in order to keep its line going - as it would be justified in doing in order to continue direct communication with the whole world over British territory - would from its general revenue make up for any loss on the working of the line ? How long is any private company going to stand that? Of course it would have to give way, but the existence of the private company would force the Government to do their work economically, and to keep pace with private enterprise. I, as one who has stood up bodily for State enterprise, am not afraid that the State could have its business crushed out by any private enterprise. I, therefore, say that if the people of Australia desire to send their messages by either of the lines connecting us with the old country they should be allowed to do so, and I strongly support the amendment of Senator Sargood.

Senator STANFORTH SMITH

- After listening to the remarks of honorable senators this afternoon, one might be excused for thinking that the Government were a body of evil disposed persons.

Senator McGregor

- Brigands.

Senator STANFORTH SMITH

- And that on every possible opportunity they will do every injury it is in their power to inflict, provided there is not an Act of Parliament to prevent them. On the other hand, it is quite refreshing in contradistinction to that to hear what a beautiful organisation, and philanthropic body the Eastern Extension Telegraph Company is. On the one hand, we are told that we must distrust the Government in every way-; we must not give them any power whatever, or they will be bound to abuse it ; while, on the other hand, we are told that the Eastern Extension Telegraph Company is so philanthropically inclined, and so good in reducing their rates, that we must trust them in everything, and must not injure them in any way. I have had a considerable amount of experience of the Eastern Extension Telegraph Company, possibly as much as any honorable senator present, and my own opinion is that it is one of the most dangerous and insidious monopolies we have in the British Empire. That company has been making enormous profits for years, but it has been careful enough to hide those profits. It has watered its stock ; it has built up huge reserve funds; it has built fleets of repairing boats, and laid down other cables out of its profits. In these ways, it has hidden the enormous profits it has made out of the people of Australia and the other peoples with whom its lines . are connected. That philanthropic body is managed by millionaire directors, men like Lord Tweedmouth and others ; and what did they do when the proposal was made that the British Empire should come together and have an Empire cable? They placed every obstacle they could in the way of it. Through Lord Tweedmouth, in his position in the House of Lords, and in every other way, they used every influence they could to obstruct the Pacific cable line. These are the people we are implored to assist, and the other cable, the profits from which will go to the people as shareholders, and not to private directors, we are to disregard. Senator Playford mentioned that the great reason why this Empire cable could not be carried into effect was that South Australia had a telegraph line which had been built by the State.

Senator Playford

- I was not so foolish as to say anything of the sort.

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Senator STANIFORTH SMITH

- I beg the honorable senator's pardon if that is not what he said. I thought he gave it as an unanswerable argument why the Postmaster-General should not have the power to divert the traffic to the Government line that South Australia had patriotically built a State line from Adelaide to Port Darwin. I point out to honorable senators that Western Australia has also got a cable at Broome. The Empire cable would prejudicially affect that line, but we have not heard honorable senators from Western Australia say that for that reason the Commonwealth should not have this right. I object to the statement that the Government will go out of their way to do an injury to any State unless they are prevented by some such amendment as has been proposed. The Government have been subsidizing the Eastern Extension Telegraph Company for some years past, and if they will ultimately lose by the South Australian line it is not likely that they will go out of their way to specially injure South Australia. I ask honorable senators from the various States if the Commonwealth Government are going to be so unfair as to absolutely injure their revenue and their prospects in that way. I think such a clause as this is absolutely necessary, because it is quite possible, and I believe it has been done, for private companies to give a rebate on messages sent over their lines. They will do that kind of thing privately, and will make, perhaps, an arrangement for six or twelve months with some firm to send their messages at a certain rate.

Senator Playford

- That is pure assumption on the honorable senator's part.

Senator Sir Frederick Sargood

- This will not prevent it.

Senator STANIFORTH SMITH

- No, but the Government can prevent it by sending the messages across their own line if the rates are the same. I understand by this clause that the Government can send the messages by whichever line they like. Therefore, where the Eastern Extension Telegraph Company advertise their rate at 3s. 6d. a word, and the Government also advertise a rate of 3s. 6d., it will not matter whether the Eastern Extension Company allow a rebate privately or not, the Government can send the messages across the Government line. That is why I consider this clause so absolutely necessary. The Government department must conduct its business fairly, openly, and above board, while the private company need not necessarily do so. I do not believe that any Postmaster-General of this Commonwealth will unfairly take advantage of this clause. But I believe such a clause to be necessary in the interests of the Empire, the people of Australia, and even of the cablers themselves.

Senator WALKER

(New South Wales). - There is one point I would like to mention to the Postmaster-General. I presume there is no reason why a State department should not be conducted on business lines, and if he finds that an opposing company is offering inducements at a lower rate, I fail to see why he should not also be prepared to allow the same reductions.

Senator Drake

- Give special rebates to individuals?

Senator WALKER

- Why not? Why should we not reserve the right to give special rebates under certain circumstances?

Senator Drake

- Would the honorable senator let the Government do that ?

Senator WALKER

- I would. I think the Government have a right to say that, where more than a certain number of words are cabled, they will allow the same reduction as may be allowed by any private company.

Senator Sir William Zeal

- The secret is coming out now.

Senator WALKER

- I am a free-trader, and I am not ashamed of it. I trust the Government will, when they make regulations,

reserve to themselves the right I suggest, in order that they may be able to meet competition.

Senator DRAKE

- I have been charged several times during the discussion of this Bill with trying to get extraordinary power under the Bill. I have never asked for such a power as that of being able to make private arrangements with individuals. I am perfectly convinced that the Senate would never consent to give me any such power.

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Senator Walker

- I mean a general arrangement.

Question - That the words proposed to be inserted be so inserted - put.

The committee divided -

Ayes ... .. 9

Noes ... .. 16

Majority ... .. 7

Question so resolved in the negative.

Clause agreed to.

Postponed clause 90 agreed to.

Amendment (by Senator Drake) proposed -

That the following new clause be inserted after clause 77 : - "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."

Senator Sir FREDERICK SARGOOD

- I think I gave notice of an amendment not as against the clause, but as to its position, I would suggest that it should be inserted as a sub-clause to clause 77, because otherwise it would conflict with the proviso we have agreed to.

Senator DRAKE

- No. I have had these three clauses printed together in order that honorable senators may see exactly how they run. The new clause gives authority to any person to erect and maintain telegraph lines.

Amendment agreed to.

Senator Sir FREDERICK

SARGOOD (Victoria). - I wish to insert a provision which was specially put in the Crimes Act of Victoria to meet what was found to be a want of power. Prior to the enactment of that provision, many documents perforce had been allowed to pass through the post-office, owing to the want of a definition of the word "indecent," and two years ago the Parliament of this State passed the provision, which I have copied in order that the Postmaster-General may have an opportunity of deciding whether it is advisable to insert it in this Bill. If it is not inserted, I think it will be found that two other clauses we have passed will be practically inoperative. I move -

That the following new clause be inserted after clause 41 : - "If at any post-office there is received for transmission throughout the post any newspaper, packet, or parcel containing any picture or advertisement or any printed or written matter in the nature of an advertisement, which picture, advertisement or matter is of an indecent or obscene nature, the Postmaster-General or any Deputy Postmaster-General may refuse to transmit or deliver the same through the post, and may cause any such newspaper, packet, or parcel to be destroyed."

Senator DRAKE

- I have no objection to the substance of the amendment if the committee see fit to pass it. But as to the phraseology, what does the expression "throughout the post" mean? I

Senator Sir Frederick Sargood

- I thought that the better plan would be to copy the section in the existing law. I am not wedded to the words.

Senator DRAKE.- I do not like the phraseology at all. If I had the opportunity, I would recast the amendment, but I think we might omit the words "throughout the post" and "through the post."

Senator Sir Frederick Sargood

- I am quite content. That will satisfy me.

Amendment amended accordingly.

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Senator STEWART

- The new clause appears to me to be of a most vague and uncertain character. It provides that matter of an indecent or obscene nature shall not be permitted to go through the post-office. What is indecent and what is obscene? Every postmaster or postmistress at any little post-office is to be endowed with the power of deciding as to the indecency or obscenity of matter. In this Senate we have 36 senators, the elect of Australia, so to speak, from a political point of view. I do not think we could agree amongst ourselves as to an advertisement being decent or indecent. Some honorable senators might consider an advertisement indecent when I should see nothing wrong in it, and vice versa. Papers containing advertisements of Tattersalls sweeps were not allowed to go through the post-office in Queensland. In Victoria there is a law which seems to me to be of such a character as to be almost ridiculous, as to certain advertisements. I think, before we pass a proposal of this kind, we should have a definition of "decent" and "indecent." I quite agree with a number of honorable senators that some words are indecent, but I do not know that I could suggest a definition. It is not my business to provide a definition. It is the business of the honorable senator who proposed this clause to do so. Let the honorable senator bring his definition before the committee and let us decide upon it then. If the honorable senator proposes the Victorian definition shall be against it, because I think that sort of thing has established a censorship which is altogether foreign to our ideas of British liberty, or Australian liberty, or any other Wind of liberty. Why should we set ourselves up as purists and say that advertisements referring to certain diseases shall not appear in the newspapers? We know that those diseases exist and that people wish to be cured of them. We also know that certain individuals are specialists in regard to them.

Senator Sir Frederick Sargood

- Many of them are quacks.

Senator STEWART

- Why should not they be permitted to advertise their business in the newspapers, just as the honorable senator is allowed to advertise his business?

Senator Sir Frederick Sargood

- He does not advertise.

Senator STEWART

- The honorable senator says these specialists are quacks. My humble opinion is that the whole lot of the medical profession are quacks. I religiously keep clear of them.

Senator Walker

- If the honorable senator had a broken leg he would not do so, I suppose?

Senator STEWART

- The most skilful man in that respect in the country from which I come was not a regular doctor at all.

Senator Cameron

- You mean Ferguson?

Senator STEWART

- I believe that was his name. He never saw the inside of a University and never received the slightest assistance from any qualified individual. Before I give my consent to this amendment I should like to have a definition of what is meant by "decent" and "indecent."

Senator PEARCE

- I think we are only duplicating legislation in passing the proposed clause. In clause 41 we have made every provision that is necessary. That clause says -

The Postmaster-General or any Deputy Postmaster-General may at any time cause any postal article having anything profane, blasphemous, indecent, obscene, offensive, or libellous written or drawn on the outside thereof, or any obscene enclosure in any postal article to be destroyed.

Then the phrase "postal article" is defined as -

Including letters, post-cards -

I do not see how we could have anything either decent or indecent on the inside of a post-card; it must be on the outside in that case. letters, cards, newspapers, pickets or parcels, and all other articles transmissible by post, and includes a telegram when transmitted by post.

So that I think everything desired is already provided for in clause 41, and Senator Sir Frederick Sargood is only asking the committee to duplicate this clause by another one of a similar character ; because while the proposal before the committee provides a special provision for anything appearing on the outside of the document, it also provides for anything in the enclosure.

Senator Drake

- Would an advertisement in a newspaper be an enclosure?

Senator PEARCE

- Yes, because it appears in a postal article, and the term "postal article" is defined as including a newspaper. Then again the question arises - what is the outside of a newspaper? I take it that you could very well- say that the side upon which the advertisements appeared was the outside of a newspaper. I do not think the clause is' necessary.

Senator Sir WILLIAM ZEAL

- There is a good deal in what Senator Pearce has said. I would point out in addition that clause 27 deals very fully with this matter, and gives the Postmaster-General most extraordinary powers. As far as newspapers are concerned, there is no doubt whatever that the Postmaster-General has absolute and arbitrary powers to refuse to send by post any newspaper containing -

Seditious, blasphemous, indecent, or obscene matter, or which, by reason of the proportion of the advertisements to other matter therein, or for any other reason is not within the description aforesaid.

So that there is no doubt that, as far as a newspaper is concerned, the Postmaster-General has this power already. As to clause 41, probably its phraseology might be altered so as to include the bulk of the amendment before the committee. It would be very injudicious to have three clauses dealing with one class of offence, when people will have to read through a very long Act of Parliament to find the provisions bearing upon particular offences. The whole matter ought to be dealt with in one clause if possible. If necessary, that could be clause 41, to which the amendment could be added as a proviso.

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Senator DRAKE

- I think that Senator Sir William Zeal is correct, because the committee amended clause 27, to which there is now a new sub-clause, that is very clear. It provides that -

Any Deputy Postmaster-General may refuse to transmit or deliver any publication containing seditious, blasphemous, indecent, or obscene matter.

There is not much difference between that and the proposal of Senator Sir Frederick Sargood. It seems to me that the object aimed at by the honorable senator is nearly covered by that proviso.

Senator Sir Frederick Sargood

- Very nearly, but not quite.

Senator MILLEN

- There is a distinction.

Senator McGregor

- But not a difference.

Senator MILLEN

- And a difference. Clause 27 provides for the case of newspapers; and clause 41 limits the power of the Deputy Postmaster-General to anything "written or drawn."

Senator McGregor

- Or to any "enclosure."

Senator MILLEN

- It does not include printed matter. There may be printed matter which is not inserted in a newspaper or not published in the ordinary way.

Senator McGregor

- There is bound to be an enclosure.

Senator MILLEN

- It does not follow that it would be either " written or drawn." While we are considering this matter it would be better, rather than adopt Senator Sir Frederick Sargood's proposal, to recommit clause 41 so as to make it read " written drawn or printed."

Senator Sir FREDERICK



SARGOOD (Victoria). - It is true that to a large extent my proposal is covered by clauses 27 and 41. It will be noticed that clause 27 has been copied in part from section 4 of the Victorian Post-office Act. It was afterwards found that that provision did not cover the ground. Action was taken and the Full Court decided that it did not cover the cases contemplated. A clause similar to clause 41 was then introduced, but that was found not to cover the ground. Then the section I have submitted was passed as part of the Crimes Act, and subsequent to that a definition of the word "indecent" was put in the Crimes Act. It is not a definition such as I would care to read to the committee ; but' if honorable senators would like to read it they can see what was considered necessary by the Full Court.

Senator Drake

- It is also in the Queensland Indecent Advertisements Act.

Senator Sir FREDERICK SARGOOD

- If the Postmaster-General can see his way to recommit clause 41, I shall be glad to withdraw this amendment.

Senator Drake

- I would rather have it go in as a new clause.

Senator STEWART

(Queensland). -I must confess that

Senator Sir Frederick

Sargood has not satisfied me with regard to the definition which he has just handed to me. The honorable senator objects to reading the definition to the committee, and probably honorable senators have no desire to hear it, but it merely refers to diseases which every one of us knows to exist. As I have said previously, if those diseases are in existence why should not people who suffer from them be afforded an opportunity of knowing where they can be cured ?

Senator Sir Frederick Sargood

- The honorable senator does not want those papers circulated amongst his family ?

Senator STEWART

- Well, I do not know. That is another matter entirely. There is a book which has been said to be, and I believe is, one of the best books we have got, and it contains very many passages that would come under the heading of "indecent" under this definition of indecency. I suppose the honorable senator knows the book to which I refer. Does he propose to prohibit the use of that book in his family, or does he propose to cull out certain passages - to edit the book- and after it has been purified and purged and cleansed of its impurity will he permit it to be circulated in his family circle ? My experience has been that young people are not in the habit of reading advertisements. They very rarely trouble their heads with the advertisements that appear in newspapers. This definition appears in the Victorian Crimes Act. The honorable senator wishes to apply it to the whole Commonwealth. A great number of very reputable British newspapers have been stopped in this holy State of Victoria. So far as my experience is any guide, however, the standard of morality in the old country is just as high as it is in Australia ; it is certainly as high as in Victoria. I refer to the personal morality of the people. The public and commercial morality of "the people of Great Britain is very much higher than the public and commercial morality of the people of Melbourne.

Sir William Zeal

- Do not say that.

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Senator STEWART

- I say with all respect to honorable senators that the city of Melbourne stinks in the nostrils of Australia so far as its public morality is concerned. Is this not the land of the boom we have all heard of as occurring a few years ago - the boom which swallowed up in its vortex a number of innocent inoffensive people? And yet the very people who condone that boom come along with this pettifogging attempt to put down immorality. They strain at the gnat and swallow the camel with a vengeance ! In this inquisitorial Act which the honorable senator wishes to apply to the whole Commonwealth, Victoria includes such newspapers as the Dundee News. Dundee, I may say for the information of some honorable senators, is in Scotland, and Scotland is one of the most moral countries under the sun. The people there are much more careful of what comes under the eyes of their children than they are in Victoria. Then Victoria

excludes the People's Journal, thirteen editions of which are published per week. It is one of the finest newspapers published in Scotland, a newspaper which I have read during the last 40 years, and from which I have derived a great deal of benefit. I do not remember ever having read advertisements of this particular class in that paper in my life, and could not tell whether they appear in it or not. My inclinations would not lead me to look for that sort of thing. I do not descend, as some of our Victorian people apparently are so well fitted to do, to the gutter. I look at the leading articles and at the columns of news. I examine the correspondence and read the matter dealing with the questions of importance that were before the country at the time of publication. I never trouble my head about the advertising columns, and I believe that in that respect I am a fair sample of the vast body of newspaper readers. Are the majority who do not read these advertisements to be punished for the sake of the very small minority? Of course the honorable senator will say that in this indirect method we shall stamp out the publication of this class of advertisement. I say, however, that these advertisements are just as legitimate as any other kind. Just as consumption is a disease, so the matters referred to in these advertisements are also diseases.

Senator Millen

- Is there not something about prevention mentioned in the advertisements?

Senator STEWART

- Yes. If honorable senators have no desire to have this definition read in public I will not read it to the committee. Senator Millen has spoken about prevention and about the appearance of advertisements relating to it in the newspapers. Every one knows that this sort of thing is carried on to a great extent in Australia. I am not going to say whether it is right or wrong, but people have a perfect right to judge for themselves in this matter. From my point of view, at any rate, the State has no right to interfere. In addition to the Dundee News, I find that the People's Journal (thirteen editions), the Liverpool Mercury, the Belfast News, the Newcastle Chronicle, the Glasgow Herald, the Weekly Freeman, the English Mechanic, Reynolds' Newspaper, News of the World, and a number of others which are not specified have been stopped.

Senator McGregor

- No wonder the people are so ignorant in this country.

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Senator STEWART

- All these papers have been prevented by this inquisitorial law from coming into Victoria. Let us take the English Mechanic. What craftsman reads the advertisements in that journal? A man does not turn his attention to that particular part of the paper. He may do so in some cases, but if a man takes the English Mechanic he does so in order to improve his knowledge of mechanics. The honorable senator, however, would deprive him of that privilege because some little advertisement to which he objects appears in an obscure corner of the paper. I say that the interests of the majority ought to be considered rather than the interests of the minority. The clause which the honorable senator proposes to insert appears to me to be asking far too much power altogether. It is inspired by the most prurient ideas. This sort of censorship is altogether unworthy of the people of Australia. If these newspapers can be circulated in Great Britain, surely we should have no objection to their circulation here. It is adopting altogether a Pharisaical attitude to say that they are so impure and contrary to our ideas of good morals that we cannot permit them to be circulated amongst us. I do not think we ought to take up the position of censors in this way. What is good enough to be circulated in Great Britain cannot be too bad to be circulated here. Their standard of morality at home is quite equal to ours as far as I have been able to gather, and I shall certainly oppose this attempt to create in our midst a kind of Russian censorship.

Senator PEARCE

(Western Australia). - I intend to oppose the clause, because I consider we have sufficient safeguards in the Bill already. A definition of what is an indecent advertisement is to follow this proposal.

Senator Dobson

- There is no reason why it should.

Senator PEARCE

- Unless we have some definition we shall be met with the same difficulty as that which occurred in Victoria. Senator Sir Frederick Sargood has told us that in a certain case the Full Court would not give any decision until a definition had been inserted in the Act.

Senator Sir Frederick Sargood

- I said, the prosecution broke down.

Senator PEARCE

- If we adopt this clause with a view to inserting the proposed definition which has been circulated by Senator Sir Frederick Sargood we shall be doing something which is altogether too sweeping. I do not see any harm in some of the advertisements which are referred to. The diseases to which they relate undoubtedly exist, and what harm can there be in allowing the publication of advertisements which purport to announce a cure for them. I fail to see how they can have any immoral effect on the people who read them. If a person of a pure mind reads them is that man or woman likely, to be degraded by reason of that act. I hope we shall not be led away. This is puritanical legislation to an extreme degree, and it will not have the effect of raising the morals of the community one iota. It will simply add to the list of offences under the Crimes Act, and deter the circulation of papers which are a benefit to the community. I am familiar with Reynolds' Newspaper and the English Mechanic, and I think it would be a distinct advantage if they were more fully read in Australia. If we are going to prevent such newspapers from circulating in this country, we shall do more harm than by allowing these advertisements to be published.

Senator DRAKE. - I should hesitate a long time before consenting to insert in the interpretation clause the definition which has been referred to. If Senator Sir Frederick Sargood, intends to follow this proposal-

Senator McGregor

- The honorable senator said he could see no good in it without the definition.

Senator DRAKE

- I think the honorable senator was referring to the Crimes Act, under which the case to which he alluded was brought. If it is desirable in any State to legislate against the publication of indecent advertisements, that work should be left in the hands of the State.

Senator Major Gould

- No prosecution could take place under this clause such as might be instituted under the Crimes Act.

Senator DRAKE

- The postal authorities, under this proposed clause, could refuse to transmit newspapers containing this objectionable matter. The words "indecent and obscene" are well-known in connexion with our postal laws. I think that we should be going a little too far however if we endeavoured in this Postal Bill to legislate really in a matter which should be left to the State Parliaments.

Senator DE LARGIE

- I quite agree with what Senator Stewart has said in reference to the necessity for a definition of the word "indecent." Unless we have such a definition we shall keep out a number of good newspapers. If honorable senators read the definition which has been circulated by Senator Sir Frederick Sargood they will see that there is great danger in it. I do not see why these specialists should not be allowed to advertise, as long as their advertisements are couched in reasonable language, just as well as specialists in the treatment of diseases, relating to the eye or the ear. We are not legislating against the cure of disease. We are here to further the cure of disease as much as possible. To take up the attitude which some honorable members have suggested would be very unreasonable, and I for one would not support it.

Senator MILLEN

(New South Wales). - The remarks which have fallen from several honorable senators in this quarter may be all very well ; but they are entirely out of place. The honorable senators should have made their strong protest when the committee was doing what they tell us should not be done.

Senator O'Keefe

- They did.

Senator De Largie

- The honorable senator was not here.

Senator MILLEN

- But I can read what is before me. The committee having determined that the Postmaster-General shall have the power to refuse to transmit or deliver publications containing seditious, blasphemous, or obscene matter, it does appear to me that this protest is unnecessary so far as newspapers are

concerned.

Senator Pearce

- Has the honorable senator read the proposed definition?

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Senator MILLEN

- No. There is no necessity for a definition. If there was any necessity to supplement the proposed additional clause by a definition, a similar course would have been necessary when we were dealing with clause 27.

Senator Pearce

- But Senator Sir Frederick Sargood has said that the Full Court refused to deal with a case in which there was no definition.

Senator Drake

- That was a criminal case.

Senator MILLEN

- All that the Postmaster-General will have to do under this clause will be to refuse to deliver any of these newspapers. I simply rose to point out that the alarm expressed in this quarter of the committee is founded upon an idea that a definition which honorable senators have seen privately will have to be provided. The honorable senator who has moved this amendment may or may not intend to propose a definition, but even if he does it is not incumbent on the committee to accept it.

Amendment agreed to.

Senator DRAKE

- Before asking you to report the Bill with amendments, Mr. Chairman, I should like to say that I propose to move that the Bill be recommitted for the purpose of reconsidering certain clauses. I should be glad if honorable senators would take note of these particular clauses, because in some cases when we have had clauses under discussion. I have expressed my willingness to have them recommitted if necessary. Subsequently other parts of the Bill have been dealt with, and the necessity for recommitting them has ceased to exist. The clauses I have noted down are these - Clauses 2, 5, 15, 16, 17, 19, 21, 27, 36, 68, 77, 78, 91, 92, 95, 103, and 142. I have circulated the amendments I propose to move on recommitment. Bill reported, with amendments.

Senator DRAKE

-In moving that the Bill be recommitted-

The PRESIDENT

-Will the honorable senator look at Standing Order 304? It says -

At the close of the proceedings of a committee of the whole; House on a Bill, the Chairman shall report the Bill forthwith to the House, and if amendments have been made thereto -

And they have been made in this case- a time shall be appointed for taking the report into consideration and moving its adoption ; and the Bill, as reported, shall in the meantime be printed.

Motion (by Senator Drake) agreed to -

That the consideration of the report be an order of the day for to-morrow.

SERVICE AND EXECUTION OF PROCESS BILL

President of the Executive Council - New SouthWales

Senator O'CONNOR

. - I do not know whether I shall be in order in moving now that the Bill be recommitted, or whether that will have to be done by way of amendment.

The PRESIDENT

- The honorable senator may move it now.

Senator O'CONNOR

- I move-

That the Bill be recommitted with a view to the reconsideration of clause 10 and the insertion of a new clause. .

The PRESIDENT

- I point out to honorable senators that if that motion is carried they cannot consider the rest of the Bill.

Senator O'CONNOR

- It is only for that purpose that I desire its recommitment.

Question resolved in the affirmative.

In Committee:

Clause 10 -

When no appearance is entered by a defendant to a writ of summons served on him under this Act, if it is made to appear to the court from which the writ was issued or a Judge thereof - and if it is also made to appear to such court or Judge that the writ was personally served upon the defendant, or that reasonable efforts were made to effect personal service thereof upon the defendant, and that it came to his knowledge and that the defendant wilfully neglects to appear to the writ, or is living out of such State or part in order to defeat or delay his creditors or deprive the plaintiff of the relief to which he is entitled (in which case the writ shall be deemed to have been served on the defendant) such court or Judge may, on the application of the plaintiff, order from time to time that the plaintiff shall be at liberty to proceed in the suit in such manner and subject to such conditions as such court or Judge may deem fit, and thereupon the plaintiff may proceed in the suit against such defendant accordingly.

Any such order may be rescinded or set aside or amended on the application of the defendant.

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Senator O'CONNOR

- It becomes necessary to make an amendment in this clause for the sake of bringing out the meaning more clearly, and also for the purpose of making more clear the meaning of the words " the defendant neglects to appear to the writ." The difficulty; that arises is this". It appears that; the almost universal practice of the justices is to regard the failure to appear when a man has been served with a process, or a process has come to his knowledge, as being a wilful neglect. That is generally the law, but I understand that there have been some decisions in Victoria which rather alter the effect of that, and make it really very doubtful how far one has got to go into the mind of the defendant to make it appear that his failure to appear has been wilful. We have, of course, to avoid these little legal conundrums wherever we can, and I propose to make an amendment here which will make it perfectly clear that when a man has been served with a summons, or when the summons has been brought to his notice, that will be taken as sufficient to consider subsequent failure to appear as wilful. That will save all the legal difficulty, and the other amendment I would propose in the clause is simply a readjustment. I move -

That the clause be amended by the omission of the following words, lines 5 to 10 - "And if it is also made to appear to such court or Judge that the writ was personally served upon the defendant, or that reasonable efforts were made to effect personal service thereof on the defendant, and that it came to his knowledge and that the defendant wilfully neglects."

I shall afterwards move for the insertion in lieu thereof of the following words : -

And if it is also made to appear to such court or Judge -

that the writ was personally served on the defendant ; or

that reasonable efforts were made to effect personal service thereof on the defendant, and that it came to his knowledge (in which case it shall be deemed to have been served on him), and that he neglects.

I propose then to omit the words in lines 14 and 15 -

In which case the writ shall be deemed to have been served on the defendant.

Senator Sir JOHN DOWNER

- I should much prefer that the word " wilfully " should be left in. This is a very extreme power that is given in this clause. We are going to provide that a man shall be bound by a process that he has not been served with. Brown, Jones, or Robinson may have told him of it, but he may have disbelieved them, and we leave it to a Judge or to a court to say that he ought to have believed them, and should have looked after it. That is bad enough on the face of it, and though we do find it absolutely necessary to make provision that if the process comes to his knowledge he shall be bound to take notice of it, the least we can do is to say correspondingly that if he does not take notice of it he shall be shown to have wilfully neglected to do so, which I understand to mean that he knew it was genuine, and wilfully availed himself of an opportunity of evading it. I think the word " wilfully " ought to stop in the clause. I think the words - In which case the writ shall have been deemed to have been served on the defendant are necessary to fix the date on which the process came to his knowledge, in order that the time allowed for an appearance to it may be estimated. .

Senator O'Connor

- That is not material, because if he does not appear they will proceed under the section.

Senator Sir JOHN DOWNER

- Yes, but within what time is he to appear? The form of the writ is "ten days after service thereof." I suppose the form will now be altered, and we will say eight or ten or 50 days, or whatever the time may be after the service thereof, or after the issue of the writ becomes known to the defendant. I suppose the writ will have to be altered to something like that form, and I think the statute should provide for that. As to the bigger question of whether or not, or to what extent a man is to be bound by knowledge of a process he has never seen, I am really not sure that the word " wilfully " in such a case is strong enough. It is not merely that I object to the word being omitted, but I am not sure that it is strong enough.

Senator O'Connor

- Will the honorable and learned senator suggest a stronger word?

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Senator Sir JOHN DOWNER

- I am satisfied with it. Some of my friends here may tell me that a writ has been issued against me, and I may thoroughly disbelieve them. But I will still, under the clause, have had notice of it, though I have never seen it, and do not know what it contains, or what it is about. Some one says to me - " A writ is issued against you," and I laugh and say - " I do not think so. I do not know any one who has any cause to issue a writ against me. I cannot conceive it possible, but I suppose I will hear more about it if it be true." Can it be said in that event that I wilfully neglected it? Of course not. The thing is too ridiculous! Therefore, I want something more than a mere notice, which may be accurate or inaccurate. I think it is necessary to prove that a man has notice of the writ, that he knew about it, and knowing that a writ was issued against him, knowing what it contained and all about it, he wilfully neglected to appear to it, for the purpose of defeating the ends of justice. All these conditions we have to satisfy. It is not enough to know that a writ is issued against him. We have to prove that he has notice of what is in the writ so that he knows in respect of what matters it is issued against him. Really these things which we pass a little hurriedly sometimes may be most serious in their ultimate import. I am thinking aloud, because this thing was given to me at the minute and I have only read it now for the first time. It is doing away with the service. No man can complain if he does not know what is that which he has in his hands. But directly we attribute knowledge to a man of that which has not been given to him, which he has never seen, we have to be very careful that under this general disposition which I am afraid we have to make things easy and comfortable in administration, we do not work the most terrible and gross injustice. The more I think about the clause the less I like it. I am inclined to think that there ought to be greater precautions taken. I have perfect confidence that the law will be fairly administered, but we ought not to rely on confidence; we ought to rely on law. And all we can be satisfied of is in having confidence that the law will be properly administered. I suggest that " wilfully " covers a lot of ground, because the term " wilfully neglects " must mean that the person, knowing all about it, purposely does not act. It covers an immense amount of ground.

Senator Clemons

- The trouble is that it covers too much.

Senator Sir JOHN DOWNER

- Perhaps it does. Of course, we are giving offhand opinions, but it is a matter of great importance, and I think the word "wilfully " ought to be retained.

Senator Dobson

- It has to be proved that it came to his knowledge, and, therefore, if he neglects, it is a wilful neglect, whether we put it in or not.

Senator Sir JOHN DOWNER

- That is to say, that he was told and believed it. If I am served with a writ I know it. But supposing that Senator Dobson told me that a writ was issued against me, I should probably think that in his case it was right if he said he knew about it and had seen the writ. But what does "came to his " knowledge " mean ? It must mean the double effect of coming to a man's knowledge and his believing that it was issued.

Senator Dobson

- This is meant to apply to men who are evading service.

Senator Sir JOHN DOWNER

- Undoubtedly keep in the word " wilfully," and honorable senators have not very much trouble. They dispense with service, they make notice sufficient, and then they go and strike out " wilfully," which I do not think has been omitted in any legislation I have known of. I think we ought to put in that the writ shall be taken to have been served on the day on which the man had notice.

Senator HARNEY

- I am sorry that I do not quite agree with Senator Sir John Downer. I think, with all respect, he has rather confused two things. The proposition involves a twofold consideration. First, the bringing of the writ to the notice of the person served, and, secondly, something he has to do afterwards. With reference to the former consideration, I think his arguments are not appropriate for this reason - that the provision does not become operative unless it is shown to the satisfaction of the Judge that it was brought to the man's knowledge. Therefore, assuming that it is shown to the satisfaction of the Judge that it was brought to his knowledge, the position of that party henceforth ought to be exactly the same as that of a person served. Let us apply the word " wilfully " to a person served. Is it not superfluous to say that a person served with a writ should wilfully enter, an appearance 1

Senator Sir John Downer

- Certainly not.

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Senator HARNEY

- Wilfully implies in that case that he might be served and might not know that he was to enter an appearance. But it follows, as a matter of course, that if he gets a writ and reads it, or it is brought- to his knowledge that\* he has been served with a writ, therefore he has to do something to enter an appearance. The ordinary presumption of law when a party served allows the stipulated number of days to pass by without doing anything is, that he is wilfully refusing to put in an appearance, either because he thinks he has not a case, or because he wishes to hamper the other party. The view I take on one side is that " wilfully " is to be read exactly the same as if it were used in reference to an appearance, which was to be entered by a person who had been served. It applies equally to both.

Senator Sir John Downer

- The honorable and learned member is quite clear.

Senator HARNEY

- I know that my honorable and learned friend spoke impromptu, but I had an opportunity of thinking while he was speaking.

Senator Sir John Downer

- I am disposed to agree.

Senator HARNEY

- Then the honorable and learned senator will also see that, while really it puts the person to whom knowledge is brought in the same position as the person served, if we allow the word " wilfully " to remain, we open the door for the greatest delays and the greatest abuse. It is impossible for us to get into a man's mind, and, if a person can go to the court, and the Judge says - " I am perfectly satisfied that this was brought to your knowledge," is he to be allowed to answer " Oh, yes ! But I did not wilfully refuse to enter an appearance; I forgot all about it," or "I really did not understand"?

Senator Sir John Downer

- Either it is served or it is not served. I agree with the honorable and learned member.

Amendment agreed to.

Senator O'CONNOR

- I now move-

That the following words be inserted in lieu of the words omitted: - "and if it is also made to appear to such Court or Judge -

that the writ was personally served on the defendant ; or

that reasonable efforts were made to effect personal service thereof on the defendant and that it came to his knowledge (in which case it shall be deemed to have been served on him), and that he neglects."

I wish to answer something which the honorable and learned senator said about the necessity for fixing a day on which the writ shall be deemed to have been served on the person. I would suggest that it would

be very much better not to tie the hands of the Judge, because the whole thing goes before a Judge, and if these difficult matters contained in the early part of the clause have been proved, and if the defendant wilfully neglects to appear to the writ, or is living out of the State, in order to defeat or delay a creditor - such court or Judge may, on the application of the plaintiff, direct from time to time that the plaintiff shall be at liberty to proceed in the suit in Such manner, and subject to such conditions as such court or Judge may deem fit, and thereupon the plaintiff may proceed in the suit against such defendant accordingly. The first starting point is at what date shall it be taken that the defendant was served. The Judge will decide that, because he will be able to say that on such and such a date the first step must be taken, that the declaration must be filed, and that so many days after that a judgment may be filed. The matter will thus be left entirely to the Judge. I would suggest to my honorable and learned friend that nothing would be gained by laying down a hard and fast rule that on the date on which the writ comes to the man's knowledge it shall be deemed to have been served on him. There is no necessity for it, and one can easily understand cases where it might be a hardship on the defendant to have the proceedings taken from that date. We get all we want by leaving it to the Judge to fix the procedure after hearing all the circumstances.

Senator Sir JOHN

DOWNER (South Australia). - The view I take is that people are entitled to their rights quite apart from the view which any Judge takes. An ordinary writ is served on a man, and there is a certain number of days fixed, as a matter of course, in which he has to appear. In this instance, the Minister wants to attribute service where there is none, and I agree entirely with the argument of

Senator Harney,

and I admit that my off-handed opinion was not as accurate as it might have been ; but now that we have the clause, why should we put the man to whom we attribute service in possibly a worse position than a man on whom we have effected service ?

Senator Clemons

- Not necessarily.

Senator O'connor

- Why in a worse position?

Senator Dobson

- In every case the Judge would fix the date when it came to his knowledge.

Senator Sir JOHN DOWNER

- But then it ought to say so.

Senator Dobson

- The Judge will say so in the order to proceed.

Senator Sir JOHN DOWNER

- That is assuming that the Judge will make law when we have none. I believe the Judge will do right, but he has no choice as to the number of days within which a defendant has to appear after service. That is fixed by law.

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Senator O'Connor

- Not at all. It says - " The Judge may on any terms he thinks fit so the whole procedure is open to him.

Senator Harney

- "Shall be at liberty to proceed in such manner as the court directs."

Senator Sir JOHN DOWNER

- I only submit that we ought to provide that service by notice shall be deemed to be personal service on the day on which the defendant receives notice. I am perfectly sure that the Judge will administer the provision in that way. The only question is whether when we fix times in respect to things we can deal with and we are starting a new procedure, by which we are attributing service where there has been none, we should not say that then the service shall be deemed to have been effected on the day on which the defendant has notice. That is all I am suggesting. I have sufficient confidence in any tribunal to be sure that it will act properly. At the same time I think it ought to be in the Act.

Senator HARNEY

(Western Australia). - A slight difficulty might arise if we substituted for the bringing to his knowledge that



it shall be deemed to have been served on that day. For all practical purposes they are convertible terms. I think in the expression the notice "came to his knowledge" we have reference to a separate series of occurrences. The Judge may say - "I am not prepared to say that he got notice on Thursday, Friday, or Saturday, but there is evidence before me that he heard something on Thursday; and was told something on Friday, and I am satisfied that he got notice." It really ought to be left to the Judge to say under these circumstances - "I will fix a time."

Senator Sir John Downer

- But when the notice was received is a complicated question.

Senator HARNEY

- As I understand my honorable and learned friend's proposition, really for practical purposes it is the same as mine, but his proposition might work out in this way, that the Act of Parliament would deem service to be on the day on which the party had notice. Therefore the Judge might be forced to say - "Now I may find as a matter of fact that he had notice on Thursday," whereas in point of fact he might not think that the evidence justified him in going that far. He might say - "I am morally certain that he had notice on Thursday, and I am more morally certain now when I see what occurred on Friday; but from what occurred on Saturday and Sunday I am certain that he knew," although he would not be willing to fix the day to which all the evidence points as the day on which the defendant got notice.

Senator Sir JOHN

DOWNER (South Australia). - Notice is knowledge. It is not a casual remark from one man to another that is intended. No one has notice of a thing unless he knows all about it. Suppose he was told something about it on Wednesday, more about it on Thursday, and the rest of it on Friday, so that by adding together the bits of information he got the whole information on Friday, then he would get notice on Friday. I still retain my opinion.

Senator STEWART

- Perhaps it is rather bold of me to enter into a legal discussion such as this, but the question appears to me to be somewhat important. I agree very much with the remarks of Senator Downer. The clause as it stood originally ought to have been sufficient. It appears to me that this amendment is asking for more power than should be given. There are only very rare occasions when personal service would not be possible; and any one can easily understand how easy it might be for a document that was left at a man's residence in his absence to be mislaid or destroyed. Such things do happen. I understand that it is proposed to excise the word "wilfully."

Senator O'Connor

- We have done that.

Senator STEWART

- That is the point I objected to.

Senator Harney

- These legal points move very quickly.

Senator STEWART

- They have moved quickly on this occasion, but sometimes they do not hurry so much. There are no fees attached to this provision, it seems.

Amendment agreed to.

Amendment (by Senator O'Connor) agreed to -

That the following words, lines 14 and 15, be omitted: - "in which case the writ shall be deemed to have been served on the defendant."

Clause, as amended, agreed to.

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Senator O'CONNOR

- I move-

That the following new clause be inserted to follow clause 23: - "24. (1) When-

Any certificate of a judgment is registered in any court; or

Any execution is issued or other proceedings are taken in any court upon any such certificate; or

Satisfaction of the judgment either in whole or in part is entered in any court upon any such certificate;

the Registrar or other proper officer of that court shall forthwith notify the same in writing under the seal of

the court to the Registrar or other proper officer of the court in which the judgment was given or made. "

(2) When any judgment whereof a certificate has been registered in any court has been satisfied in whole or in part, the Registrar or other proper officer of the court in which the judgment was given or made shall forthwith, upon such satisfaction being made or notified as the case may be, enter such satisfaction upon the judgment and notify such satisfaction in writing under the seal of the court to the Registrar or other proper officer of every other court in which a certificate of the judgment has been registered, and such satisfaction shall thereupon be entered upon every such certificate."

The necessity for this clause has appeared to me from the suggestion made by my honorable and learned friend, Senator Clemons, that there was some danger that in cases where the certificate of judgment had been filed in four or five different courts, it might be satisfied in one of those courts and yet remain on the records of the other courts as a blot on the defendant's title, or against his credit. Therefore it seems to me to be reasonable that there should be some way by which, when the judgment is satisfied either in whole or in part in any one of these courts where the certificate is filed, by some automatic process that knowledge may be conveyed to every other court, so that the record may be properly kept up where there has been a payment, or kept up pro tanto where there has been a part payment. The effect of the new clause will be that when a man takes out a certificate of a judgment, he may file it in any court. Immediately he files it in a court of one of the States, the Registrar of that court will notify to the court out of which the judgment has issued that it has been filed there, so that the home court - if I may so describe it - will always have a complete record of every place where these certificates have been filed. When any dealing takes place upon that judgment, it will be communicated to the home court, which will communicate it to the others. There will be regulations to carry out this provision, and I have no doubt they will effect the purpose we have in view - that no man shall suffer by reason of these certificates being filed in different courts when he has satisfied the judgment.

Amendment agreed to.

Bill reported with further amendments.

#### PROPERTY FOR PUBLIC PURPOSES ACQUISITION BILL

In Committee

(consideration resumed from 12th July,  
vide

page 2497) :

Clause 12 -

Every person or State claiming compensation in respect of any land so acquired, or work or other matter done under the authority of this Act, shall within 90 days from the publication of such notification, or within such further time as a Justice of the High Court upon the application and at the cost of the claimant may either before or after the expiration of such 90 days appoint in that behalf, serve a notice in writing upon the Minister, and a like notice upon the Attorney-General, which notice shall set forth the nature of the estate, interest, or title of the claimant in such land, together with an abstract of title, and if the claimant claims in respect of damage the nature of the damage which the claimant has sustained or will sustain by reason of such acquisition or work or matter, together with full particulars of such damage, and such notice shall be in such form as may be prescribed.

Upon which Senator Harney had moved by way of amendment -

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

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Vice-President of the Executive Council

Senator O'CONNOR

. - It will be within the recollection of the committee that when the discussion which took place on clause 12 was adjourned last week, an amendment by Senator Harney was under consideration. The proposal was that the word " publication " should be struck out and the word " service " substituted. The point of the amendment was that the date from which the man's claim should run should be the date of the service of the notification on him, and not the date of the notification in the Government Gazette. That amendment alone would have been of no use, but it is intended by Senator Harney to move another amendment upon a previous clause, the effect of it being that it shall be obligatory on the Government to serve the notification upon every person interested in the land taken. As I pointed out at the time, the difficulty in

regard to that method of procedure is this : The way we have dealt with the matter in this clause, is that we have followed the practice which has been in vogue in New South Wales for many years. I understand that it has also been the practice in Tasmania. That is to say, where it is necessary to take land for public purposes, we notify by the Government Gazette that the land has been resumed, and on that notification the land becomes the property of the Crown. Then within a certain number of days after the notification, any one claiming an interest in the land must make his claim ; otherwise the claim is not received. There is no obligation in New South Wales or in Tasmania to serve a notice ; and notice has not been served where land has been taken in New South Wales under such a provision. In moving his amendment, Senator Harney admitted that it was quite right that when a notification was published the land should immediately pass to the Government. His contention was, however, that the owner of the land should get some kind of notification that the land had been taken so that he might prepare himself to make his claim. My difficulty in acceding to that amendment was that if we make it necessary to search out every person who is interested in the land, it may be a very difficult matter. It may take some considerable time. In the case of intestate estates, it is very often an exceedingly difficult matter to find out which are the persons interested as a matter of law, and, consequently to find out where they are and where they are to be served.

Senator Sir William Zeal

- Post the notice on the land.

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Senator O'CONNOR

- I am coming to that point in a moment. If we have to notify each person interested there is a great deal of difficulty in getting the question of compensation settled. There is also the further difficulty about it, that if we start a claim for compensation from the date when the man is served, we shall have one party interested in the estate served on one day, another person served the next week, and another the next month ; and so we shall have the time for settling these claims extended over a very long period. By the process which is adopted in this Bill, and which has been followed in New South Wales and Tasmania, we fix one date - the date of notification in the Gazette - as the date when the claims commence to run ; so that they are all ripe on the one date. We bring the whole question of the value of the land before the court, and the amount of compensation to be given is settled at the one trial ; and then the different parties interested come in and get their different shares. I propose to make an amendment, which, I think, is a fair compromise between the view put forward by my honorable and learned friend, Senator Harney, and the view I have taken. I propose to make it obligatory upon the Government to serve the notice, if it can be served, upon the owner of the land immediately after the notification in the Gazette. If the owner cannot be served, it is to be served at his last known place of residence, or by registered letter. If the owner cannot be found after reasonable diligence, the notice is to be posted on the land, as has been done in Victoria. That having been done, I propose in the next sub-clause to make the date of claim still date from the notification ; but I propose to give the owner another month. That is to say, instead of making it 90 days after the notification in the Gazette, I propose to make it 120 days within which the person whose land has been taken, or the person whose interest in the land is affected, has to make his claim. So that the net result of the proposed amendment is that we oblige the Government to serve the notice upon the owner if he can be found ; or, if he cannot be found, it is to be left upon the land ; and then, whether the owner can be found or not, or is served or not, within 120 days after the notification in the Gazette, the tune begins to run after which the claim must be made. It seems to me that this is fair to the owner of the land in the first place, because it makes it the duty of the Government to serve him with notice if he can be found. No doubt he will be served if he can be found. When he cannot be found, the notice will be posted up on the land. In either case it gives a very long period - 120 days after the notification in the Gazette - from which to date the making of the claim for compensation. If the owner has been served, 120 days is ample, and I think it also gives an abundance of time in which to find him. If he cannot be found ; if he is not accessible or available, it cannot matter much to him when the claim for compensation is to be sent in. In either case it will avoid the complication and delay attendant on having all these claims coming in at different times. It fixes one day for commencing the work, and enables that amount of despatch to be carried out in arriving at the question of compensation which we are anxious to obtain. At the same time I do not think that any injustice is done to the owner of the land. I ask your ruling,

Mr. Chairman, if I may do so, as to the best way of putting this amendment. I propose to put it as a -new clause before clause 12.

The CHAIRMAN

- The honorable and learned member can do that when we have finished the Bill.

Senator O'CONNOR

- As I cannot do it in that way before we have finished with the Bill, I prefer to add the words at the beginning of the clause, and then make a sub-clause of what is now clause 12. In order to enable me to do that it will be necessary for Senator Harney to withdraw his amendment.

Amendment, by leave, withdrawn.

Amendment (by Senator O'Connor) proposed -

That before the word -"Every," line 1, the following words be inserted : - "(1) Immediately after the publication in the Gazette of a notification that any land has been acquired under this Act the Minister shall cause a copy of the notification to be served upon the owners of the land resident within the Commonwealth, or such of them as can with reasonable diligence be ascertained, either personally or by registered letter posted to their last-known place of abode." "(2) If any owner is absent from the Commonwealth, or cannot, after diligent inquiry be found, a copy of the notification shall be left with the occupier of the land, or, if there is no occupier, shall be affixed upon some conspicuous part of the land."

Senator HARNEY

- I withdrew my amendment because the Vice-President of the Executive Council has really met me in the objection that I urged. The only difference between what I required and what the honorable and learned senator gives is that the interested parties are not to be served. Ample provision is made, however, for bringing the matter home to the knowledge of the persons most concerned, so that I think my requirement may be dispensed with. May I point out to Senator O'Connor, as he means this to exhaust two methods of bringing home to the knowledge of the owners the publication of the notice, that he ought to add after the word "be," line 4,, in sub-clause (2), the words, "served upon his registered attorney, or if there be none then." We know that persons leaving the country do register their attorneys, and therefore they- could be served with notice.

Senator Playford

- The attorney would know where his principal was.

Senator HARNEY

- It would be quite sufficient to serve the attorney.

Senator O'Connor

- Provision for the registration of attorneys is not made in all the States.

Senator HARNEY

- There is such a provision in Western Australia. ' However, I will not press the proposal, because, after all, it comes within the term " diligent inquiry." There would not be a diligent inquiry if there was a registered attorney, and inquiry failed to disclose him.

Senator CLEMONS

- I am glad that Senator Harney has withdrawn his amendment, because the clause as proposed to be amended by Senator O'Connor amply meets all that he wants. Senator O'Connor, however, might possibly make his amendment clearer in sub-clause (2). He might make it more evident that a copy of this notification must be left with the occupier,, if he inserted after the word "found" the words "or if such registered letter shall not have been delivered." Sub-clause (1) contemplates discovery of the owner in two ways - personally or by registered letter. I do not think that in the second clause the use of the word "found " completely includes personal discovery, or such discovery as is implied in the delivery and receipt of a registered letter. I have no desire to move this amendment, but the insertion of the words I have mentioned would more completely cover the meaning of sub-clause (1).

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Senator Sir WILLIAM ZEAL

- So far as the experience of Victoria is concerned, the amendment which the Vice-President of the Executive Council has submitted, will be most ample and effective. There are very few allotments of land on a line of railway or in a district the owners of which are not known. Where they are not known, the allotments are generally- small and insignificant. Let us take a case where land has been cut up into a

number of small allotments. The greater number of the owners of these allotments are identifiable and observable with notice. The municipal council makes diligent inquiry, and if after that exhaustive inquiry it cannot find the owner of a piece of land, the notice is placed upon it, and that is treated by the court as if notice had been served on the man himself. The municipal council can then levy upon the land, and actually lease it for a term of years until the rates upon it have been paid. That is a commonsense way of dealing with the difficulty. In Victoria we have had much experience in the cutting up of land, and I can assure Senator Clemons that this system has proved most efficacious.

Senator Clemons

- I quite agree with the honorable senator.

Senator DOBSON

- Senate. O'Connor has met very fairly the objection taken by Senator Harney. I am almost inclined to think he has gone too far in giving 120 days notice. The honorable and learned senator might have simplified the work of the Government by having a more comprehensive definition of the word "owner." Senator O'Connor's proposal is open to what he pointed out last week was the objection to Senator Harney's proposal. He has put upon the Government the making of the inquiry as to who and where the owner is. As we have a municipal roll, and as most of the States where a land tax is levied have a national roll, the Government would be perfectly right in providing that the "owner" shall be the person named in the municipal or national roll. It would thus avoid the necessity of making inquiries. It is hardly fair to cast upon the Minister, who is to administer this Act, the duty of inquiring all over the place for the owner of a piece of land.

Senator Clemons

- That is covered by the term "reasonable diligence."

Senator DOBSON

- Yes. But when we have legal documents upon which properties are valued, and which are used as a guide for taxation purposes, why should the Government have to look outside them.

Senator Millen

- But what would happen where the owner was not named in these rolls?

Senator DOBSON

- Then this would come in.

Senator O'Connor

- There might be a change of ownership after the rolls had been compiled.

Senator PLAYFORD

- I think the Vice-President of the Executive Council has very fairly met the objection raised by Senator Harney. The objection was that the owner of the land was not bound to receive the notice under the clause as it stood if that notice was only published in the Government Gazette. Senator O'Connor argued that that objection would only apply to very few cases, but we do not want to do an injustice under any circumstances to any individual. I think the honorable and learned gentleman has met us in every way. He has apparently taken a clause from the present Victorian Act, which is also the law in South Australia, and has worked exceedingly well there. Apparently, according to Senator Sir William Zeal, it has worked equally well in Victoria. The honorable and learned gentleman has gone quite as far as is necessary in providing for the service of notice on the owners of land. When I argued the question last week I did not intend to imply that the Government should give notice to any one that might have some claim in an estate. All that I asked was that as far as possible notice should be given to the owner. With reference to Senator Clemons' proposal I think it is already covered by the words of the clause. Surely it is part of the diligent inquiry.

Senator Harney

- It is only to balance the first sub-clause. Really, it is only grammatical.

Senator PLAYFORD

- I do not see that there is anything grammatical involved in it. I think we have been met in every possible way, and I do not see any necessity for making a further alteration.

Senator O'CONNOR

- I would point out to Senator Clemons that really there is no danger of any difficulty or injustice arising in the direction he has indicated, because in the first sub-clause, it is provided that the owner must be

served with notice, either personally or by registered letter. If he cannot with reasonable diligence be found then a registered letter will be posted to, him. I presume that a registered letter would not be posted to him unless he was known. Then it appears to me that that being so sub-clause (2) comes in.

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Senator Harney

- The question really is as to the meaning of the word " found," in, sub-clause (2).

Senator CLEMONS

(Tasmania).- Perhaps

Senator O'Connor

did not exactly follow me. In clause 1, two methods of discovery are provided - (1) ordinary personal discovery and (2) discovery by means of a registered letter, if that letter is delivered. If he receives it the man is discovered through its agency. Sub-clause (2) only comes as a necessary complement to sub-clause (1), because it refers again to the question of discovery, and says that a copy of the notification shall be left with the occupier of the land, if the owner is absent from the Commonwealth, "or cannot after diligent inquiry be found." That might be meant. to apply simply to personal service. We ought to cover the chance of his being found by the receipt of a registered letter.

Senator O'Connor

- We must know where the owner is before we can address a letter to him.

Senator CLEMONS

- No. We may have his address, but yet not know that he lives there. That is to be ascertained by posting the letter.

Senator O'Connor

- What words does the honorable and learned senator propose to insert ?

Senator CLEMONS

- I propose that the words " or if such registered letter shall not have been delivered " be inserted after the word " found."

Senator Pearce

- Then he would not be found ?

Senator CLEMONS

- Precisely, and in that case a copy of the notification would be posted on the land. When we do that we have completely proved that he cannot be found by either of the means suggested in sub-clause (1).

Senator HARNEY

(Western Australia). - What I should like to point out is that the amendment suggested by

Senator Clemons

is really in favour of the Government and of easy administration. Honorable senators will see at once that sub-clause (1) provides that the owner is to be notified by personal service or by registered letter. The second sub-clause deals with cases where that notification cannot be effective. It is only to the ease of the department to exclude the two means by which we provide for the notification before we allow to be done what is provided for in subclause (2).

Senator Playford

- " Cannot be found " covers it.

Senator HARNEY

- With all respect to Senator Playford, I do not think that he quite follows me. Really it is a matter only of grammatical construction. What it is wished to insert in the clause is that if the owner is absent from the Commonwealth, or cannot, after diligent inquiry, be found- -

Senator Playford

- There is the provision for the registered letter.

Senator Clemons

- Until it had been shown that it had been received, we would not know whether that inquiry was worth anything.

Senator HARNEY

- The sub-clause says -

If any owner is absent from the Commonwealth, or cannot, after diligent inquiry, be found, and what is

referred to there is the methods of finding provided for in the first subclause.

Senator Playford

- That must be complied with first.

Senator HARNEY

- If the two means provided in sub-clause (1) are found not to be effective though diligence has been exercised, Senator Clemons then proposes to make the clause convey simply what I believe we all understand it to mean. If we do not put in the words suggested by Senator Clemons we are in this position : Suppose we have attempted to personally serve a person and have been unable to do so ; suppose we have attempted to send a registered letter to him and are unable to reach him, then the second subclause comes in, and we say we will allow something else to be done. But before we do something else it is necessary that we should exclude what should have been done before. By the clause as it stands we merely exclude the personal service, and if we have tried to serve him by registered letter and have not been able to do so, we cannot take advantage of the second sub-clause. Senator Clemons wishes to provide that we shall be able to attempt to serve personally or by registered letter, and shall then be able to take advantage of sub-clause (2).

Senator O'CONNOR

- I want to know how we can get proof that a registered letter has not been delivered?

Senator Clemons

- If it is not delivered it must be returned to the Post-office. That is the system of the department, and the Postmaster-General should know that.

Senator O'CONNOR

- The Postmaster-General tells me that it has got to go through numerous processes. It must remain, for instance, in the dead letter office for a month, and no steps could be taken to put this notice up on the land until that period had elapsed. We might add the words " or if such registered letter is not delivered."

Senator Harney

- It would be better to say "or if service by registered letter cannot be effected."

Senator Clemons

- It is just the same thing ; I do not want to quibble about the word so long as the amendment is made.

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Senator O'CONNOR

- I move-

That the amendment be amended by the insertion of the words "or if service by registered letter cannot be effected" after the word "found," in sub-clause (2).

Senator CLEMONS

(Tasmania). - I am very glad that the Vice-President of the Executive Council proposes to .accept this amendment, but seeing that we are seriously engaged in legislation, I rise to ask him whether it would not have been wise to insert the words I have suggested? As he has raised a difficulty about proof of a registered letter being delivered, I want the honorable senator to be sure that he is meeting that difficulty in the amendment.

Senator O'CONNOR

- I think the amendment proposed will meet the difficulty. By using the word " delivered " the difficulty would be raised, but when we say "if service by registered letter cannot be effected," it simply means that a man cannot be found, and there is no use trying to deliver a letter to him.

Amendment of the amendment agreed to.

Amendment, as amended, agreed to.

Senator O'CONNOR

- Consequentially upon the amendment I have already made, I move - - That the word "ninety," lines 4 and 8, be omitted with a view to insert in lieu thereof the words ' ' one hundred and twenty. "

Amendment agreed to.

Senator DOBSON

(Tasmania). - I have never seen an important Bill like this in which the whole transactions are between the Government and the owner of property, which did not contain a definition of the word "owner."

Senator O'Connor

- There is a definition of the word " owner."

Senator DOBSON

- I know, but it is not put in for the purpose of taking the land. The definition of the word " owner " should "be the person, for the time being in receipt of the rents and profits, and should include agent, attorney, manager. It ought to go on to say that when two or three trustees are interested, it shall be sufficient to serve one of them. I am sure the Minister will save time and trouble hereafter if he adopts what is the 'invariable practice of having a comprehensive definition of the word " owner" including all the persons to whom I have referred.

Senator Playford

- The definition of the word " owner " in the Bill " any person, who, under this Act, is enabled to sell or to convey land " covers everything.

Senator DOBSON

- That is for the purpose of serving ; but this is for the purpose of deeds.

Senator O'CONNOR

- In answer to Senator Dobson, I point out that the word " owner " is defined for all the purposes, of the Bill to mean any person who is enabled to sell or convey land. Any one who is an owner in such a sense that he is able to sell or convey land must be served with a notice.

Senator Dobson

- We want a wider definition.

Senator O'CONNOR

- This is quite sufficient. The Bill has been very carefully considered, and all the machinery necessary for carrying out the various provisions have been inserted upon well known models. I could not see my way now to alter the definition of " owner," which has been introduced in connexion with a certain system, unless we also proposed to alter the system itself.

Senator Dobson

- We might say that for the purpose of this section the word owner shall include the persons entitled to the rents or who receive the rents.

Senator O'CONNOR

- I do not think there will really be very much difficulty in serving any of them.

Clause, as amended, agreed to.

Clause 13-

Within 60 days after the receipt of every such notice of claim, by the Attorney-General he shall forward the same, together with his report thereon, to the Minister, who shall thereupon (unless no prima facie case for compensation has been disclosed) cause a valuation of the land or of the estate or interest of the claimant therein, and, if the claimant claims in respect of damage, of the amount . of such damage, to be made in accordance with the provisions of this Act, and shall inform the claimant as soon as practicable of the amount of such valuation by notice in such form as may be prescribed.

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Senator HARNEY

- Shortly, this clause provides that the Attorney-General shall forward a report to the Minister ; the Minister shall thereupon consider the case, and if he considers that no prima facie case has been made out there is an end to the matter, and it is only where he considers that a prima facie case has been made out that there is a valuation if the parties do not agree. The necessity for the amendment I intend to move is shown in clause 14. Honorable senators will see that the effect of the two clauses is that the Minister shall have it in his power to say whether a prima facie case has been made out; if he says that there has been no prima facie case made out it goes to arbitration, then compensation is sought to be fixed, and if the parties cannot agree an action lies. So, therefore, whether a person can ultimately vindicate his right is dependent entirely on the will of the Minister, because the Minister may say, " I consider that no prima facie case for compensation has been made out," and if he does there is no right of action in the person. Clearly, that is, I think, a mistake in the drafting. It could never have been intended that the mere opinion of the Minister as to whether the persons had any right to compensation was to end the matter. I move - That the words " unless no prima facie case for compensation has been disclosed," lines 3 and 4, be omitted, with a view to insert in lieu thereof the words : -



If no prima facie case for compensation has been disclosed, notify the claimant that his right to any compensation is disputed.

If a prima facie case for compensation has been disclosed.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 14 -

If, within 90 days after the service of notice of claim, the claimant and the Minister do not agree as to the amount of compensation, the claimant may institute proceedings in the High Court in the form of an action for compensation against the Attorney-General as nominal defendant on behalf of the Commonwealth. Provided that with the consent in writing of the Attorney-General and the claimant, any such action may be so instituted at any time (to be mentioned in such consent) before the expiration of 90 days from service of the notice of the claim for compensation, but not within 14 days from service of the notice of valuation on such claimant.

Senator HARNEY

- I propose to insert at the very beginning of the clause the words -

If the Minister notifies claimant that his right to any compensation is disputed, or

The effect of the amendment is that, the right of action is in both cases.

Senator O'Connor

- The only objection I see to the amendment is that the time is unlimited within which the action may be brought.

Senator HARNEY

- I think there ought to be a limitation. Perhaps it will do if it is worded in this way -

If within 90 days after the Minister notifies the claimant that his right to any compensation is disputed, or if after the service of notice of claim the claimant and the Minister do not agree.

Senator MILLEN

(New South Wales). Clause 14 provides that within 90 days a certain action has to be taken, and the previous clause swallows up 60 days of that period, leaving only a month for the Government and the claimant to come to terms. That is rather too short a period in which to insist that an agreement be arrived at. With a complicated property, and with, perhaps, several joint owners to consult, I can understand that a month might be too short a time within which to permit of an agreement being arrived at. If an agreement can be arrived at within a month so much the better, but is it well to tie the thing down in that way?

Senator Harney

- This is the number of days used in the English Act.

Senator MILLEN

- There can be no advantage in saying that an agreement must be arrived at within that time, and cases might arise where there would be considerable hardship in forcing people to refuse terms which they might have accepted if a little more time had been allowed for consideration.

Senator HARNEY

(Western Australia). - If we are to give two months within which to come to an agreement in clause 14, the 90 days should be made 120 days.

Senator O'Connor

- Give another month.

Senator HARNEY

- The way in which I suggested my amendment would be scarcely fair, because it would enable the person to bring his action where there was a dispute only at the expiration of two months, and it would still give a person four months to bring an action where the Minister notified that he had no claim. I think the clause ought to read in this way-

If within 60 days after the Minister has notified to the claimant that he has no right to any compensation, or within 20 days after the service of the notice of claim.

We must make the periods differ, because otherwise they will be too long in one case and too short in the other.

Senator O'CONNOR

- Senator HARNEY

will see that in clause 14 there is nothing to compel the claimant to institute the proceedings within the 90 days. He cannot institute them until after the expiration of 90 days. If within that time the claimant and the Minister do not agree as to the amount of compensation, the claimant may then institute proceedings; but, suppose that period has expired, he may then delay his proceedings as long as he likes.

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Senator MILLER

- Without forfeiting the right of action ?

Senator O'CONNOR

- The 90 days do not refer to the institution of proceedings. These words have passed right through from 1845.

Senator HARNEY

(Western Australia). - It has been suggested to me that it would be more clear if the period of 90 days were repeated. I, therefore, move -

That before the word " if," line 1, the following words be inserted : - "If within 90 days after the Minister has notified the claimant that his right to any compensation is disputed or."

Amendment agreed to.

Clause, as amended, agreed to.

Clause 15 (Justice to determine compensation).

Senator Sir FREDERICK SARGOOD

-I notice that in this clause and several succeeding ones the word " justice " is used. Would it not be well to make it perfectly clear that a justice of the High Court is referred to?

Senator O'Connor

- Clause 14 provides that it is in the High Court that the proceedings are to be instituted, and the words " a justice " in this clause refer to a justice of that Court.

Clause agreed to.

Clause 16-

If the judgment in any such action is for a sum equal to or less than the amount of the valuation notified to the claimant, the claimant shall pay the costs of the action, but if for a greater sum, the Commonwealth shall pay such costs.

The justice before whom the action is tried shall in no case have power to direct a reference to arbitration, except by consent of the parties. '

Either party to the action may move for. a new trial in accordance with the practice of the High Court.

Senator HARNEY

-I move -

That after the word "sum," line 5, the words "or if for any sum where the right to any compensation is disputed " be inserted.

This amendment is consequential on what we have done. The clause only provides for the payment of costs in reference to the ' class of actions that were provided for, namely, those where there was a dispute. It makes no reference to a class of actions which are now included, namely, those in which the Minister comes to the conclusion that there is no *prima facie* case.

Amendment agreed to.

Senator HARNEY (Western Australia). - The clause only makes provision for a trial when the courts have to deal with the amount of compensation assessed, but now that they have to deal with the question as to whether a person has any right at all, they must have power to say at once whether a person is to be allowed to go on again.

Senator O'Connor

- I do not think it is absolutely necessary.

Senator HARNEY

- It is not absolutely necessary except that if we put in the words " set aside " it is open for the Appeal Court to say - " This person has no right at all, and it is no use sending it back." If we leave in the words " new trial " it will be open for the court to say - " We shall grant a new trial." I move -

That after the word "trial," in sub-clause (3), the words "or to set aside the finding" be inserted.

Senator O'Connor

- I do not object to the amendment.

Amendment agreed to.

Senator DOBSON

- I desire to ask the Minister two questions. The first is as to the matter of costs. It should be borne in mind that we are not dealing with arbitrators, nor with a Judge sitting with a jury, but solely with a Judge of the High Court, who will know exactly what he is doing. I desire to ask if there is any precedent for providing that the costs shall go as this clause provides ?

Senator O'Connor

- Yes.

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Senator DOBSON

- In some Lands Clauses Acts I am inclined to think that the provisions relating to costs are not so favorable to the Crown as is this clause. I can quite understand that in some cases the land-owner may consider, and his neighbours may consider also, that he has a good reason for disputing the amount offered to him. Supposing the Judge were likewise of that opinion, he might like to order each party to pay his own costs. I suggest to the Minister that he should put in the clause the words - "unless the Judge otherwise orders." I dare say that out of every 50 cases there may be an exception to the rule, but here we take away from the Judge the discretion which should be given to him. No one knows better than lawyers that costs are generally left to the Judge. It is impossible to lay down a hard-and-fast rule. Every case must stand on its own merits. I can understand an owner bringing an action, and not taking the amount awarded to him by the arbitrator, and his friends thinking that he had good reason for not accepting that valuation. But I doubt "whether the proposal of the Bill, permitting the parties to apply for a new trial, is the correct course. Here, again, I would point out that we are not dealing with arbitrators, who constantly make mistakes in law, who sometimes do not admit evidence when it is tendered, and in other respects admit evidence which is not really evidence. Therefore, in such cases there may sometimes very well be a motion to set aside the award. But here we are dealing with a skilled Justice of the High Court. Yet the clause says that after the matter is dealt with there may be a new trial.

Senator Harney

- How are you to vary the compensation otherwise ?

Senator DOBSON

- You are to have a new trial before the same Judge, I presume.

Senator O'Connor

- That does not follow at all. According to the practice of the courts some other. Judge would try the case in the second instance.

Senator DOBSON

- It appears to me that this is a question of policy. Here we are deliberately saying that we take the case out of the hands of skilled arbitrators and do not allow it to go to a jury, and yet we provide that if the owner does not like the decision he is to have a new trial to another Judge of the High Court.

Senator Clemons

- No. It is an appeal to the Full Court of three Judges.

Senator DOBSON

- It appears to me to be a new trial before a Judge sitting without a jury. After the evidence has been heard by a skilled Judge sitting without a jury it is a wrong thing to throw doubt upon this tribunal. It is all a matter of opinion. The land-owner will bring before the Judge the best evidence he can produce that his land is worth so much more than the Government is willing to pay for it, whilst the Commonwealth will bring forward the best evidence it can get to show that the land is not worth so much. And when, say £1,000 is awarded, what is the use of having a new trial because the owner thinks he should receive £1,200 ? It seems to me that the provision is not consistent with the rest of the Bill.

Senator O'CONNOR

- The honorable and learned member will see that the provision is that the owner may move for a new trial in accordance with the practice of the High Court. The practice in all countries within the British dominions is that where there has been a finding upon the facts the

Full Court never disturbs the decision unless the verdict is demonstrably wrong - unless it is a verdict that no reasonable person could have been expected to find. It is only in such cases that a finding on facts is disturbed. Surely in the great bulk of cases the finding on the facts will not be such as "no. reasonable man will find ; and in such cases the Full Court would not order a new trial.

Senator Dobson

- Only in the case of a justice being in the wrong ?

Senator O'CONNOR

- Yes. Suppose there were a case in which a justice had given a certain decision that no reasonable man ought to have come to. Why should not that be upset ? The bulk of cases will be cases where questions of law arise. They may arise in a variety of ways - through evidence having been wrongly admitted, or the principle of assessment having been wrong. It may be difficult to decide on what principle the assessment should be made. Surely the claimant should go to the highest tribunal to settle such a question of law?

Senator Dobson

- I think the honorable and learned senator is right there. On a question of amount the Minister says that the Full Court would not order a new trial ?

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Senator O'CONNOR

- No. I say that if it is a question of fact only the Full Court would never interfere, whether as to the amount or the basis of the calculation unless there was something demonstrably wrong about it ; but if the amount depended upon some wrong principle of assessment the court would, and ought to, interfere. By leaving the words of the clause as they are, according to the practice of the High Court, I think the honorable and learned senator will find that the court will only interfere where there is a question of law involved, or where the facts have been so dealt with that no reasonable man could come to the decision arrived at. With regard to the question of costs, this clause is advisedly drafted in its present shape following a great number of similar Acts. For this reason : there ought not to be any encouragement to bring actions, and there should be every compulsion reasonably exerted to make people come to an agreement. A man who takes an action against the Crown ought to know, and the Crown ought to know if it disputes a claim against a land-owner, that the costs will be against the party who has improperly made the claim, or who ought not to have resisted the claim. The clause makes the parties do their best to come to a settlement.

Senator Dobson

- My suggestion does that.

Senator O'CONNOR

- No ; the honorable and learned senator's suggestion would put the claimant or the Government - whoever was in the wrong - in the position of being able to resist a claim properly made, knowing that they would escape costs in that way. ' It is very much better . to have a provision which will prevent people disputing claims or making them when there is no ground for them, whether the party doing so be the land-owner or the Commonwealth Government. We all know that in a great many of these cases it is a matter of " heads I win and tails you lose." A man may enter into long litigation with the Commonwealth, and when the end of it is reached he may not be able to pay any costs at all. I want to discourage people from bringing actions when there is no real ground for them. On the other hand, the clause puts an obligation upon the Commonwealth officer, who is responsible to see that the valuation made is a fair one, that he can stand by under the penalty of the Government being made to pay the costs if the Commonwealth is wrong. Similar provisions to this have worked very well for a number of years in other States. If the departure is made which the honorable and learned senator suggests, encouragement will be given to people to bring claims against the Commonwealth, and the officers of the Commonwealth will be encouraged not to be as careful as they ought to be in making their valuations.

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Senator KEATING

- I regret that I cannot agree with Senator O'Connor with respect to the payment of costs. I do not think' we can take as a criterion of the necessity of this provision what has been the practice in the various States under the Lands Clauses Acts, or any modification of those Acts that any of the States may have chosen to adopt in the past. Senator Dobson has pointed out very clearly that there is a very grave

distinction between the class of cases- and the manner in which they are to be determined under this Bill, and the class of cases" that have come up for consideration and the method of determining them in the past under the various Lands Clauses Acts of the several States. In the States cases we have had arbitrators. Our experience, at least in the case of those States who have modelled their law upon the Land Clauses Consolidation Acts of Great Britain, has been that where it has been necessary to resume land for public purposes the land owner simply receives a notification from the public authority that a certain portion of his land is to be taken by the Government or by the particular body intrusted with statutory powers by the Parliament of the States. He is asked to notify whatever amount is due to him, not only for the acquisition of his land, but for the damage arising to the rest of his property through any severance that is necessary. The owner makes an assessment accordingly; and we know that in every case the man is exceedingly charitable to himself; Where £500 would have been paid him, he is careful to ask for £2,000. The Government then appoint their evaluators to determine what shall be paid to him, and the valuers perhaps certify that £600 is ample compensation. The individual is tendered £600, and perhaps he refuses to take less than £2,500. The matter then goes to arbitration. By whose compulsion does such a matter go to arbitration? Suppose the arbitrators determine that the amount the man is entitled to is £650. Is it not obvious that the arbitration is not due to the action of the Government but to the obstinacy and greed of the private individual who claims £2,500, when the Government offers him £650? Yet according to the sections of the Acts from which this clause has been modelled, if only a shilling more was awarded to the owner, he would be entitled to his costs. Here we have adopted different procedure. We have gone away from the old rut, and have introduced a Justice of the High Court sitting without a jury, with power to determine the amount of compensation to be awarded to the individual whose property is to be acquired for public purposes. I think we should have full confidence in the gentlemen who are to be appointed to the high and responsible positions of Judges of the High Court of Australia. We should surely endow them with a discretion such as is intrusted to the Justices of the several State Courts, no matter what may be their jurisdiction, high or low. I think Senator O'Connor will recognise that this is new procedure. It is a departure from the procedure we have hitherto had in the States by which we invested a man's next door neighbour, perhaps, with the power of determining the compensation to be awarded to him in connexion with the acquisition of his land; next door neighbour knowing when he gave his award that perhaps on a future occasion the claimant would be acting in a similar capacity towards land of his. When a man's property is to be acquired under the provisions of this measure, he is notified that perhaps the Government are prepared to give him £750. He may absolutely refuse it, and may then be offered £800. He may still refuse, and may be disposed to take nothing less than £2,000, knowing full well that under the rigid statutory provisions of this measure, if he can succeed in getting a shilling more than was offered him, the Government will have to pay the whole of the costs. I am not speaking merely in a theoretical sense. I have had some experience in cases of the kind, and I know exactly what is the attitude of some people towards the Government. In nearly all these cases the land-owners consistently regard the Government as a milch cow, especially where such provisions are in operation as exist in the old country. But we have deviated from that principle, and have intrusted to the highest judicial authority, to a man who is capable of considering the whole circumstances, the power of making an award. We should give to the Judge under those circumstances a certain amount of discretion, which, after all, does not exceed the ordinary limits of the powers with which the Judges of certain of our civil courts of inferior jurisdiction are intrusted. I believe the suggestion thrown out by Senator Dobson, which is dictated by past experience, ought to be adopted, and that we should invest the justices of the High Court with that little amount of discretion which is given to justices in any part of the British Empire. We should put into the clause the words "unless otherwise ordered." If the justice recognises that the claimant has been awarded an amount disproportionate to what he is entitled to, he may give to him not merely the amount he should receive, but his costs. But where the man has obstinately held out against what the Crown has offered him, and the arbitrators have offered him something that is obviously very little different from what he is entitled to, the justice should have the power of saying - "Well, Mr. Proprietor, Mr. Owner, Mr. Claimant" - or whatever he may be - "you have involved the Government in these proceedings, and when £3,750 was offered to you, it has been found that you are only entitled to £3,800. As the difference is so small we consider that each party should pay its own costs." This is a discretion which we can very well intrust to the justices of such a tribunal as we hope to have erected in Australia before very long. I trust

that Senator O'Connor will see his way clear to accept an amendment of the character suggested. It does not in vital terms alter the clause at all ; but simply carries out a principle we recognise in connexion with all our tribunals throughout the Empire. It does not violate the rights of any individual who comes before , the court to seek redress, simply because he has been forced to come there by the action of the Government.

Senator O'CONNOR. - I think there is a great deal in what has been pointed out in regard to the old condition of things under which these clauses were originally framed, and the present condition ; but it appears to me that there will be a sufficient deterrent against bringing these actions lightly, if the clause is left as it is, giving at end of it a discretion to the Judge. The Judge will see that the intention of the statute is that, unless there are certain substantial circumstances to the contrary, the costs shall follow the rule set out in the statute. The honorable and learned senator will recognise that, as we have amended the last portion of the clause, an amendment such as I have suggested cannot be made now, but I will undertake to recommit the clause, and alter it in the way I have mentioned.

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Senator Major GOULD

- I trust the committee will not agree to the suggestion made by various senators and approved of by the Vice-President of the Executive Council. I would like to point out that even as the clause now stands it is not an exact transcript of the New South Wales Act, which, if I mistake not, provides that where the amount awarded is greater than the valuation notified to the claimant, he is to be given his costs. This clause has departed from the principle apparently laid down in the New South Wales Act. Section 99 of the New South Wales Act is the one which deals with the subject, and it says -  
If the verdict in any action of compensation brought, under the provisions of this division of this Act is for a sum equal to or less than the amount of valuation notified to the claimant, such claimant shall pay the costs of such action.

I see I was under a misapprehension with respect to the New South Wales provision. I was under the impression it was the other way about. It must be remembered that in this case we are taking a man's land from him against his consent, because if he is willing to deal with the Government for the land, there will be no action at all. It will then simply resolve itself into an agreement as to the amount to be paid, but where the Government and the owner are unable to agree upon the amount to be paid, and the Government are exercising its powers under this Bill for the purpose of acquiring his land, the claimant is entitled to some more consideration than a plaintiff in an ordinary action.

Senator O'CONNOR

- Will the honorable senator pardon me. The Judge who administers the law will see on the face of the clause, that it must be only in exceptional circumstances that he deprives a claimant of his costs.

Senator Major GOULD

- In an ordinary action for a certain sum of money which may be due, or a certain amount of damage, to which a person may be entitled, the costs practically abide the event, and I say that in a case where the Government come along and take a man's land, whether he wills it or not - and I admit they have the right to do that if it is for the benefit of the public - the man should receive more consideration than he would if he had entered into a contract with another person and disputed it subsequently.

Senator Dobson

- A little more.

Senator Major GOULD

- The honorable and learned senator, I believe, wishes to leave this matter entirely to the discretion of the Judge ; but if he admits that the claimant in such a case as I have stated should have a little more consideration, surely it is a reasonable thing to say that when the claimant goes into court he should know what the result will be so far as costs are concerned, and it should not be left to the discretion of the Judge to say that because he gets less than a certain amount he must pay costs. If the position of the claimant in the matter of costs is to be entirely regulated by the discretion of the Judge we are introducing an unknown quantity.

Senator O'Connor

- Not entirely.

Senator Major GOULD

- The honorable and learned senator says " Not entirely," but I say this will be introducing an unknown quantity with regard to the costs of the action. Suppose a man has a claim against the Government for £500, and goes into court and gets a verdict for £550, would he not get his costs ?

Senator Keating

- Not necessarily. It is at the Judge's discretion.

Senator Major GOULD

- It might be so in some extraordinary cases, but I would like the honorable and learned senator to point out to me some case of the kind in which a Judge has exercised his discretion in the way suggested. I defy any honorable senator to point out a case where a plaintiff has substantially won his case and has been compelled to pay his own costs.

Senator Harney

- There are lots of such cases.

Senator Major GOULD

- I want the clause to be so framed that it will be clear that if a man goes into court in a case where the Government have offered him £500 and he gets a verdict for £550, his right to costs will follow the event.

Senator Keating

- Cannot the honorable and learned senator trust the Judges?

Senator Major GOULD

- Why should we trust the Judges unless there is an absolute necessity for it. Why not trust the Judges in everything in the same way. A plaintiff may go into court and get £20,000 damages, and it might be left to the discretion of the Judge, and be in the Judge's power to say that he shall not have a penny of costs. I say that is contrary to the principles of natural justice and equity. I am arguing now in favour of the clause as it stands, I found I made a mistake about the New South Wales statute. I do not see any honesty or fairness in putting in a provision that notwithstanding the fact that the clause is in accordance with all previous legislation, the Judge shall say whether a man shall get costs or not.

Senator O'Connor

- This is a different tribunal to the tribunal provided for under the other Acts.

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Senator Major GOULD

- Yes, there is a jury there, and it is possible that a jury may make a mistake, where a Judge would not make a mistake. But where a jury give a claimant a larger amount against the Crown than was first offered to him, he gets costs according to the verdict which the jury give. But in this case another tribunal is appointed to deal with the matter ; a Judge hears the whole of the evidence, and deals with the whole matter himself. He may say that a man is entitled to so much money, and that costs shall abide the event whatever it may be. That is, as I think, it should be, and it should not be left to the discretion of a Judge in a case of this kind, to say that a man shall not get costs where he has practically won his' case. Where the Government are taking a man's property away from him, whether he likes it or not, he is entitled to a reasonable amount of consideration, at any rate.

Senator Keating

- We want to give him consideration, and the honorable senator wants to lessen it,

Senator Major GOULD

- I do not want to lessen it. Suppose a man claims £1,000, and the Judge awards him £500. As the clause stands he would not get costs, but, as it is proposed to amend it, it will still be in the power of the Judge to say - " You shall have costs, although I have only awarded you 500." Is it likely that any Judge would do that? Is it at all likely that Judge will say to a man - " You are entitled to a smaller amount than you could have got originally, and though you could have got a bigger amount originally, and I now give you a smaller amount, I will give you costs in order to build it up a little more"?

Senator Dobson

- The honorable senator has forgotten my chief argument, that a Judge might, in an exceptional case, deprive a man of costs against the Government, and make each party pay their own.

Senator Major GOULD

- I will give the honorable and learned senator that argument in, that it is only in an exceptional case ; but is it not still very much better that a man should know exactly what his position is so far as the question of

costs is concerned. I am aware that it is not possible for men to know everything that will result from a law case, but I think it is well that every man who is compelled to go into court to maintain his rights should know that if he substantially wins his case he will not be deprived of his costs. This may to some senators seem an extraordinary idea to hold, but to that all I can say is that the idea on the other side appears more extraordinary to me, because I recognise the fact that the Government themselves deliberately and with a full knowledge of the tribunal they were creating included in the Bill a clause, which is substantially what I am arguing; for now, and it is only because of certain statements which have been made that they are prepared to depart from its principle.

Senator O'CONNOR

- I hope I shall always "keep an open mind on these matters.

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Senator Major GOULD

- I hope the; honorable and learned senator will keep an. open mind on other matters, but I am. pointing out that what I am arguing for is' the clause that the Government have themselves placed before the Senate. The Government have found that a majority, of honorable senators are opposed to what they have proposed, ' and they are willing now to abandon the position they took up in -the first instance. I do not say improperly. They may have been persuaded by the arguments adduced in this Chamber to depart from their original proposal. If the Government see fit I cannot prevent them from recommitting the clause, but, although what I have been contending for does not commend itself to the majority of honorable senators, it still appears to me to be fair and equitable. I' do not see why, in a matter of this kind, we should leave any thing to the discretion of -the Judge, unless it is absolutely necessary. I say that with. all respect to the judiciary, and with all respect to the Judges now on the bench, or to those who may occupy the bench in future/. I believe every man who goes there will be actuated by the earnest desire to do what is-, right and proper. Still Judges sometimes; take peculiar notions into their heads, and sometimes make mistakes ; and if we can lay down a particular line of action to be followed I think it is very much better that we should do so, so long as we satisfy ourselves that it is fair and just.

Senator HARNEY

(Western Australia). - I am sure that Senators Gould and Keating will excuse me for saying that they have delivered very long speeches, and throughout those speeches have clearly shown that they are not very well up in the exact practice in these matters. Whatever its deficiencies in other respects, I think I can say, with the approval of every legal member of the Senate, that there is nothing at all unusual or unnatural in this clause. The suggestion made by

Senator Dobson

was not that the - clause was in itself contrary to the ordinary legal rule, but that in this particular case we could improve upon the ordinary rule. The ordinary rule is, as this clause. says, that if the judgment in any action is for a sum equal to or less than the amount of the valuation notified to the claimant, the claimant shall pay the costs of the action. What does that mean ? Clause 13 says that after the Government have fixed the amount of the compensation they shall inform the claimant of the amount. He can take it or leave it. If he leaves it and brings an action he does so at his own peril. The court will decide the matter if an action is taken, and if the Judge upon his calculation thinks the claimant ought to get more than the notified value, h will say he was right in bringing his action and he will give him costs ; but if the Judge comes to the conclusion that he ought not to get more, or that he ought to get less than he was originally offered, he will say he was a very foolish man to bring his action and he will not give him costs.

Senator Major Gould

- That is what the clause says.

Senator HARNEY

- Exactly; and I do not see why it has been necessary to go into all these heroics about it. Senator Dobson says that, although the rule is as stated here, it is possible that an exceptional case might arise, and it would therefore be as well to amplify the rule by adding to it that the Judge should have a discretion. The proposition is really a very simple one.

Clause, as. amended, agreed to -

Clause 17 -

In estimating the compensation to be paid, regard -shall in every case be had by the evaluators or the



justice, not only to the value of the land taken, but 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 ;  
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 first day of January last preceding the date of acquisition, but without  
reference to any alteration in such value arising from the proposal to carry out the public purpose for  
which the land is taken.

Provided that where 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 first day of January last preceding the first day  
of the session of Parliament in which the Act was passed.

Provided also that the evaluators or the justice in estimating such compensation shall take into  
consideration, by way of set-off or abatement, any enhancement in the value of the interest of the  
claimant in any land adjoining the land taken, or severed therefrom, by the carrying out of the public  
purpose for which the land is taken. But in no case shall this proviso operate so as to require" any  
payment to be made by the claimant in consideration of such enhancement of value.

In ascertaining, for the purposes of this' section, what land adjoins or is severed from the land taken, no  
account shall be taken of the intersection of any such land by any roads.

Senator DOBSON

- Might I ask Senator O'Connor what is meant by " the same " as used in this clause after paragraph (b)?

The clause provides that in estimating compensation regard is to be had to the value of the land taken  
and the damage caused by severance and by the exercise of any statutory powers by the Minister, and  
the evaluators or justice shall assess " the same " according to what they find to have been the value of  
the land on the 1st day of January preceding the date of acquisition. It seems to me that the words to  
which I have called attention a're not very carefully used in the clause.

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Senator O'CONNOR

- This is the phrase followed in all these Acts. " The same" as used here applies of course to the land. It  
applies to the land all through, in the first instance with respect to the land taken itself, and in the other  
cases referred to to the value taking into account the damage by severance, or by the exercise of the  
statutory powers by the Minister injuriously affecting the land. I think it clearly means the land in reference  
to these heads of value which are stated.

Senator DOBSON (Tasmania).- I wish to ask the honorable and learned senator a question which was  
asked him before, as to whether he is quite sure "that, under clause 17, the Judge trying the matter may  
give a certain percentage for compulsory sale. I think the honorable senator told us before that the  
ordinary rule would be followed, but it occurred to me that, as the clause states exactly what a Judge shall  
allow for compensation and that it shall be the value of the land, estate, or interest of the claimant on the  
1st day of January last preceding the date of acquisition, it is possible that a percentage for compulsory  
sale may not be allowed. I am asking whether the clause is not so worded as to exclude the Judge from  
giving the ordinary 10 per cent. margin?

Senator Harney

- No. The Bill will incorporate the ordinary legal procedure.

Senator DOBSON

- I know the practice is almost invariably to give something for compulsory sale. If a mistake is made, it is  
not fair to make it against the' owner whose land is compulsorily taken, and it is the practice often to add  
from 5 per cent. up to, I believe, 25 per cent. I would like the Minister to be quite satisfied that clause 17  
allows that practice to be continued.

Senator O'CONNOR

- Under exactly similar provisions in all the States it has been constantly the practice of the court to allow  
this 10 per cent., and it has always expressly been put upon this ground : There is no legal right to it, but  
by the ordinary principle of the administration of justice where a man's land is taken, it is always supposed  
that the value shall not be weighed in golden scales. We are not to be particular in such matters about  
trifles, and it is a fair thing where a man's land is taken to allow him a little over the actual value. We

cannot restrict a Judge in dealing with this matter, and if we say nothing about this he will probably come to a conclusion that the whole value of the land is a certain amount, and he will assess it at so much. We cannot prevent him from dealing liberally - with a claimant in a case where his land is taken. The question has been raised in many cases in New South Wales, I know, and it has always been held there that it is the usual practice to direct juries in that way under an exactly similar section.. These cases will be tried according to the practice of the High Court, and that practice will be followed. There is a difficulty about putting it in so many words in the clause. There may be cases in which, although a man's land is compulsorily taken, nothing ought to be allowed for a forced sale. Supposing, for instance, that it really has not been a forced sale, that he has been very anxious to get rid of the land. He has had plenty of time to get rid of it, at a value which, it is proved, is the highest possible value he can expect to obtain. There may be cases of that sort in which the court would value rigidly according to exact evidence.

Senator Dobson

- The Minister can hardly argue it is not a forced sale because we compel him to sell.

Senator O'CONNOR

- I quite agree that it is a forced sale. The question is -whether a man suffers any damage by that forced sale. I know that a great many persons gain by a forced sale. In all the States there must be numerous pieces of land in the case of which the best thing that could possibly happen to the owners would be for the Government to resume. I should not think that they would claim anything or be entitled to anything for a forced sale. If we leave the thing in the elastic way in which it is, the Judge, if he thinks there has been any damage by a forced sale, will allow it in his ordinary estimate of damages, but if there has been nothing he will not allow it. I think it is very much better to leave it as it is. It always has been left to the discretion of the Judge in each case, and especially so where we have these cases tried by the Judge himself.

Senator DOBSON

(Tasmania).- It has just struck me that I did not make the most of my point, and I apologize for not doing so. In almost all the States except Tasmania there is an unimproved capital value tax. Therefore we have no Government or national value of the land. In Tasmania we have a land tax on the total value of the land, and one can turn up a roll and see the value of every bit of land in the island, assessed by Government valuers, with the right of appeal on behalf of the land-owners, and the land is taxed a halfpenny in the pound on that capital value.

Senator Keating

- That is the land and the improvements.

Senator DOBSON

- The whole land, with all above it and all below it. If the Government required to take any of my land, and in the roll it was put down at £1,000 could the Judge, if he wanted to give me the 10 per cent., award me £1,100 in the face of this provision? -

Shall assess the same according to what they find to have been the value of the land on the 1st January. Would the Judge be bound by our capital value roll.

Senator Drake

- Certainly not.

Senator O'Connor

- That would not be evidence necessarily.

Senator DOBSON

- Supposing that on the roll on which a man pays his taxation the value of the land to be taken is £1,000, and the Judge finds that that is the value, could he give an extra 5 or 10 per cent. ?

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Senator O'Connor

- There is nothing to bind him to that.

Senator HARNEY

- I would like to say in anticipation of any suggestion of amendment as to 10 per cent. what I, with my little experience, have always understood by the meaning of the 10 per cent. rule. If we read any of the books on compensation for land we shall find it laid down that 10 percent., at all events in England, is generally allowed not as for anything, but as for what we in Ireland call a " tilly," that is to be sure that we are on the

right side.

Senator Dobson

- To do justice to the owner.

Senator HARNEY

- Yes, and the reason why this margin is allowed is that the compulsory taking may do an intangible wrong - a wrong which can never be reduced into words or into legal tests for getting compensation. May I add that the effect, in my opinion, of fixing anything like 10 per cent. would be that then the 10 per cent. would absolutely go as a matter of law. I move -

That the clause be amended by the omission of the concluding proviso.

I am glad to say that this is not purely a legal amendment. It is one which ought to appeal to laymen, perhaps more than it does to lawyers. It is one upon which I have not formed very strong views, but I think it "would be improper if the Bill were allowed to go through without a discussion as to whether the proviso should be retained. Put into ordinary laymen's English, the proviso means this : Where a public work is put up, it may have the effect - in most cases it will have the effect - of greatly enhancing the value of the land in the locality. The clause says that if for the public work we take some person's land, we at the same time are to deprive him of the benefit he would derive as a resident of the locality from the public work. Now, looked at from his point of view alone, that seems exceedingly fair, because it comes to this : The Government take land at £500, and the work for which it is taken advantages the owner to the extent of £1,000. After the work is done he can sell his land for £1,000 more than before it was done. Therefore, it is, only fair looking at it solely in his case to say " this work has deprived you of £500 worth of land, but it has added £1,000 to your holding, therefore, it has done you no harm." The Bill says that that subtraction should be made, but we have to remember that there is another view of it. His neighbours from whom no land has been taken have got the full benefit of the enhancement. Why should he be deprived of it?

Paragraph (A) says the intention is to substitute for the land taken a claim for compensation, but the Bill says " we do not substitute for the land its value, we substitute its value minus the benefit you share in as living in that neighbourhood. Everybody else gets his land plus a share of the benefit. You get the equivalent of your land minus your share of the benefit." Supposing that three owners A, B, and C have each a property which is benefited by the work to the extent of £1,000. Now, A, B and C, as between themselves, have no greater reason to be penalized than the other. A, B and C have their lands benefited by £1,000 each by the work, but if a corner of A's land is taken he is to be deprived of that £1,000, at all events to the extent of the value of the land taken. I want honorable senators to realize what it comes to. There are three parallel pieces of ground and the effect of a railway running along in a certain direction is to make each piece of ground worth £1,000 more. It takes off a corner of A's land, and what happens ? A loses the £1,000 because we deprive him of a corner of his land, but B and C get £1,000 each and their land. Is that fair ; is it equitable?

Senator Millen

- Is there any injustice to A?

Senator HARNEY

- Any one is treated with injustice who is treated with relative hardship. Justice means equality and fairness to all. If I treat A, for no reason in the world, more harshly than I treat B and C, A relatively to B and C is dealt with unjustly.

Senator O'Connor

- The honorable and learned member must apply those principles in some other planet.

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Senator HARNEY

- Not only are my principles not far-fetched, but I shall show that they have been adopted by the very greatest Judges, and advocated so vehemently that they laughed to scorn the Victorian Act which embodied them for the first time. Let me bring home to the minds of honorable senators a view which puts the injustice very much more clearly. Take the work completed, take the enhancement given to the land of A, B, and C. Should A, B, or C get less money because the Government take his land than what he would get if a private proprietor were to take it ?' But put up that railway and let a private proprietor take a £1,000 worth of A's land, and he has to give £1,000. Let the Government take £1,000 worth of- his land, and they have to give him nothing. Is that fair ?

Senator Dobson

- That last argument is rather begging the question, because in our Tasmanian Main Line Railway Act we put in this very betterment clause.

Senator HARNEY

- With all respect it is not begging the question. The point I want to bring home is that clause 8 says that the Government take the corner of A's land and put down £1,000 compensation, which it is worth in the open market. Is that any reason why he should not get the benefit of the advantage to the neighbourhood the same as anybody else gets ? With B and C whose lands do not touch at all we leave them the land, but we give them the benefit. But with A we touch his land. We are not supposed, according to the Bill, to deprive him of -anything, but we are supposed to substitute for his broad acres pounds, shillings, and pence. Do so ; give him the pounds, shillings, and pence which stand for his broad acres, but give him the tangible benefit of the enhancement given to the whole neighbourhood. '

Senator McGregor

- The honorable senator is using a good- argument for a land value tax.

Senator HARNEY

- I hope the honorable senator will back up my good argument.

Senator McGregor

- Yes, when it is used for imposing a land value tax.

Senator HARNEY

- There is another view I wish to put. If in valuing the land we take we are to have regard, as we do by this clause, to the ultimate profits which the person may derive, where are we going to stop ?

Senator Dobson

- It does not say ultimate profits.

Senator HARNEY

- What do we say"? We admit to a man - "We are depriving you of £1,000 worth of land," but we say though we deprive you of £1,000 worth of land, though, on our own showing, we ought to pay down 1,000 solid sovereigns, still, the effect of that deprivation gives you an indirect advantage by being in the neighbourhood, and we shall subtract that indirect advantage from the sovereigns we ought to give you." If we are going to do that, why not have regard to the opposite process ? If the construction of the public work will do him an intangible injury by destroying the neighbourhood, are we going to give him compensation for it ? Nothing in the Bill says so.' Supposing the proposal is to put up a fever hospital, and we ask for 20 acres of his land for the purpose. What shall we do ? We shall compensate him for the land, no doubt, according to the market value. But shall we also give him an amount of compensation which is equivalent for the fall in the neighbourhood which the erection of the fever hospital may create ? If ' we are going to deduct from him the increment, we should add to him the decrement in the value of the land. I can well understand the fears- of persons who would argue that all this increment ought to be a matter for the State. I am not going to say whether that is right or wrong. But I submit that if the State is going to take the increment, let it take it impartially from all. Let it not take it from one as it does here. If it is intended to say, though we have taken this man's land, he has got his participation in the benefit we have done the neighbourhood, therefore we shall give him no money, I say deduct from all persons something which is equivalent to their participation in the benefit which is derived from the public work.

Senator Dobson

- That can only be done by forming a land trust.

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Senator HARNEY

- That may be. At the present moment - I do not say and will not say whether I shall advocate it or not - I am not going into that great question of land nationalization. I am only looking to this aspect : Deal relatively justice to all parties, and do not by the public work give one person the benefit which the whole neighbourhood acquires, and deprive another person of that benefit together with his land. The first time this question came to be discussed, so far as I can learn, was in 1867 in a case in court. It was the case of Egel against the Charing Cross Railway Company, reported in the Law Reports, 2 Common Pleas. The proviso to this clause, I may mention, does not appear in the English Act. The section in that Act is exactly the same as this clause with the proviso blotted out. A case came on for arbitration for the

assessment of value in these circumstances : There was a person deprived by the public works of an easement to light. The arbitrator found that that deprivation ought to be valued at £600 odd, but he also said at the end of his report - " I find that the result of the public work is to add to the market value of the house in question £1,000." This finding came up for review before the Judges. It was argued by counsel on behalf of the pro- . rooters of the work, which would be equivalent to the Government here, that the person ought not to get £600 for this reason : that although on the one hand he had lost, on the other he had gained £1,000. What did the Judges order in that case? " What," they said, "have we to do with this man's participation in a good that was common to the whole neighbourhood ? All we have to see is that he receives an equivalent in sovereigns for the wrong done to him in destroying his easement."

Senator O'Connor

- Because there was no such provision as this.

Senator HARNEY

- I am perfectly well aware of that. This provision was put into the Victorian . Act, and in the case of *Harding v. The Board of Land and Works*, 11 Appeal Cases, page 208, the decision of the Chief Justice of Victoria came before the Judicial Committee of the Privy Council. My honorable and learned friend Senator O'Connor, if he takes the trouble to read that case, will be able to discern a good deal .between the lines, as I have done. The Chief Justice of Victoria read 'the proviso as undoubtedly it only can be read, that the person whose land was taken was to derive no benefit from the carrying out \_ of the public work. The Privy Council Judges deprived the section of the interpretation which the Chief Justice gave to it, and gave a decision to this effect : " We do not hold that this section deprives a person of his share of the benefits that accrue to the locality as against what represents the value of the land taken, but we will construe it to mean that the intangible benefit is to be set off against the intangible loss he suffers by reason of severance."

Senator Clemons

- That was very clever of the Judges !

Senator HARNEY

- Yes ; and it shows the endeavours the Judges make to get over the foolishness of some Acts of Parliament.

Senator O'Connor

- It shows the endeavours some Judges make to get over Acts which Parliament passed for our good.

Senator Stewart

- What is the object of all this discussion ?

Senator HARNEY

- I am sorry if I bore the honorable senator.

The CHAIRMAN

- It is quite relevant.

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Senator HARNEY

- I thought it was a most relevant argument to use as to whether this clause should remain or not, to show that the opinions of certain enlightened and learned gentlemen were opposed to such a clause. That is what I have, endeavoured to do. I shall read to the committee the decision of Sir Richard Couch, given in behalf of the Judicial Committee of the Privy Council. -This is what he says -

The important question is whether the enhancement in value of the adjoining land is to be considered in reduction of the whole compensation to be paid by the respondents, including both the value of the land taken and the damage by reason of severance from other lands, or of the compensation for the latter only

. Then the learned Judge read the section of the Lands Compensation ' Statute of Victoria. Here are his words in which he summed up the decision of the court -

Their Lordships have had great difficulty in coming to a conclusion as to what was the intention of the Legislature in the latter part of this section. They cannot agree with the Chief Justice of the Supreme Court when he says that the policy of the last part of the section is obviously to enable the Government in the construction of railways or other expensive works, to recover by way of set-off to the compensation for land taken or injuriously affected a deduction for benefits resulting to the land-owner from the formation of

the particular work.' He does not seem to have considered that there would be lands adjacent to the railway which would be enhanced in value by the making of it, but no part of which might be taken by the board. " The owners' of these might be equally benefited with the owners of land taken, or even more so, and would lose nothing, whilst the latter might lose the whole value of their land that was taken. If this was the intention it might have been clearly expressed.

That is the opinion of the Privy Council concerning this proviso, and I hope that the committee will agree that I am not wrong in reading it. Whatever it may be worth, the Senate 'of Australia ought not to be above considering the opinion of the Privy Council in regard to such a matter. The view I have formed with regard to the matter is, that to do all-round justice, we need something in the nature of a Betterment Act. But that, I think, is impracticable at present, and until it becomes practicable we ought to treat all persons in the neighbourhood on a like footing, and ought not to say that where land is taken we will deprive the owner of that which we give to every one else in the same neighbourhood whose land we do not take. Clause 8 expresses an untruth when it says that the moment the Governor-General in Council notifies that the land is to be taken, and it is published in the Gazette, a claim for compensation is substituted for the land so taken. I say give effect to that, and place down upon the corner of the land you take the sovereigns that are its equivalent. When you have done that your work is done. Whatever benefit accrues to the neighbourhood the owner of the land is entitled to as much as the owners of the land that is not taken. I did not introduce this matter with a view of bringing up any old-fashioned debating society arguments such as we sometimes hear. Nothing of the kind. I did it in an entirely practical spirit. It seems to me, as a person whose mind is habituated to the principles of justice as they are dealt out in the courts, that when an Act of Parliament perpetuates the principle that no more than the coin, in so many sovereigns, which land is worth, shall be paid to the owner of it, then the person whose land is coined into sovereigns should be put in no different position than the person whose land is not so taken. That is the simple way of putting it. If I and two of my honorable friends in this committee have land, and a railway is to pass through the vicinity, are any of us to be put in this position : We may be told at first that the railway will not go through or touch our lands. We should all be very jubilant with regard to that assurance, feeling that we should all be richer by perhaps £500, or perhaps £1,000. Then, say, is Senator Gould to be suddenly deprived of his jubilation because the railway takes a turn through his land ? Why should he be put in a worse position than, say, Senator Millen and myself? The turn the railway takes will benefit our land just as much as it will benefit the land of Senator Gould in the case I am supposing. But in the case of Senator Gould, the Government give him sovereigns for his land, but deduct something from what he should receive on account of the extra value given to the rest of his land, which extra value Senator Millen and myself would also receive, though nothing is deducted from us. I hope the committee will excuse me if I have dwelt upon this question at some length. I think it is well worthy of discussion. I am not for a moment arguing that it is not a fair thing to do this, if we only look to the individual whose land is taken. I think the really equitable doctrine is the socialistic doctrine of betterment. But that is not what I am arguing' about at the present time. Until we arrive at that state of perfection in which we can do something in the way of adopting the principle of betterment, let every one stand on the same basis, and do not, in the name of all that is reasonable, put the man who has sovereigns instead of acres in a worse position than the man who retains the 'acres and has not had them converted into sovereigns.

Senator MILLEN

- I am sure that honorable senators will feel a measure of gratitude to Senator Harney for initiating this discussion, but I was disappointed to find that he refrained from moving an addition to the clause.

Senator Harney

- I admit that there was that lapse. I thought it better first to clear the ground in order that something might be substituted, because I have in my mind one or two things that might wisely be substituted.

Senator O'Connor

- The honorable and learned senator must substitute the whole principle of betterment.

Senator Harney

- Oh, no. It can be dealt with by means of an amendment on the clause.

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Senator MILLEN

- I understood that Senator Harney proposed to strike out the whole proviso. Listening to his arguments,

however, they appeared to be unanswerable, not only in favour of the retention of the proviso in question, but also in favour of the addition of another entirely in favour of the general principle of betterment. It appears to me that the honorable senator's argument is simply this : that the benefit conferred upon the land of one man is equivalent to the benefit conferred upon that of another. The honorable and learned senator illustrated his argument by the case of, say, A, B and C, and he argued that an injustice was done to A because some benefit was conferred upon B and C. That is equivalent to saying that if the State does something for the benefit of one man, it does an injustice to others-. If that were so, we should not pass any laws at all. Whatever laws we passed will benefit some persons. Take the Tariff. The passing of the Tariff will confer a benefit upon some merchants who, in anticipation of its provisions, have taken goods out of bond and stored them in their warehouses. I do not know a law that Parliament could pass that would not confer a benefit on some one. But are we to refrain from passing laws because of that ? Legislation would never be made at all if it were to be held that the benefit conferred upon one must be conferred all round.

Senator Harney

- I never said that.

Senator MILLEN

- We have tried this principle in New South Wales, and although I am free to admit that many difficulties attending the general application of it are manifest, we have no reason for believing that it has been an absolute failure, 'whilst in many instances in the construction of railways we have found benefits resulting from it. Suppose it was proposed to construct a railway to Western Australia, what a monstrous position it would be for the owners of some of those sandy wastes - for they are little better, if my honorable friends from South Australia will allow me to say so - to make claims for compensation on account of their land being taken.

Senator McGregor

- The land all belongs to the State now.

Senator MILLEN

- The State, I take it, would be in the same position as the individual.

Senator McGregor

- We would give the land to the Commonwealth if we could get the railway.

Senator MILLEN

- The honorable senator is very generous now, but if this proviso were struck out, the Commonwealth might be subjected to claims for condensation in that way.

Senator Harney

- This is nothing but the provision of the Victorian Act.

Senator MILLEN

- We have it in New South Wales in various special Acts, authorizing different railways to be constructed.

Senator O'Connor

- And it is in the general Public Works Act of New South Wales.

Senator MILLEN

- I know it has been adopted in connexion with some railways - such as the one to Brewarrina, where there is a zone system, and also I think in connexion with the Grenfell railway. It would be too much to ask for a further proviso in favour of general betterment j but I do not like the clause as it stands. On the other hand, if nothing better is to be obtained, on the general principle I shall support it. But I should like to have a further opportunity of proposing an addition to it for the purpose of adopting a general betterment principle.

Senator WALKER

- In New- South Wales we passed what is called the Moore-street Resumption Act, by which a street adjoining the General Post-office was widened. The persons whose land was taken away were paid for it, but the whole neighbourhood was taxed, according to what is known as the betterment principle. I was so struck with the force of the argument of Senator Harney that I suggested to him that after the word " shall " in this clause it might be well to insert the words " so soon as a betterment tax is enacted." I am not regarded by some persons as being very radical, but I think there are strong arguments in favour of the Government having the unearned increment. I shall support Senator Harney's proposal if the matter goes

to a division.

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Senator MCGREGOR

- When I heard the eloquent appeal of Senator Harney in .the interests of the unfortunate property-holders, I was almost convinced that he was right, but his arguments have been clearly answered by Senator Millen. The honorable senator clearly showed that by conferring a benefit upon 'one individual or two we were not injuring anybody else. We are dealing here with a certain proposition to give compensation to somebody, and we are also taking as a set-off against that compensation any benefit that he may receive. That is all that this clause deals, with. This Bill is not a betterment Bill, and I only hope that senators who are so frightened of conferring favour upon one or two individuals, and not conferring favour to the same ' extent upon everybody else, will support a Bill when it is brought down for the purpose of securing to the Commonwealth by some form of taxation, or in some other way, the real benefit of improvements, the people of the Commonwealth make themselves. Why not go on now and pass the clause dealing with the specific question that is before us, and, as soon as every honorable senator has made up his mind to introduce a measure which will provide that every individual who may be benefited by any federal improvement shall pay something for that, we can argue it out, and we can impose such taxation or rates upon them as will give the benefit to the people to whom it rightly belongs 1 As the question stands now, we are dealing with one party we compensate, and let us stick to that at the present time. Let us give him fair compensation, but let us see that the Commonwealth is not going to be robbed. One of the arguments Senator Harney has used was so ridiculous that I am almost ashamed to refer to it. . It is that because this law does not exist in Western Australia-

Senator Harney

- Oh, no ; in England.

Senator MCGREGOR

- Well, in England. Does Senator Harney mean to tell honorable senators that England and Western Australia contain the wisdom of the whole earth ?

Senator Harney

- They are useful guides.

Senator MCGREGOR

- They are useful guides; and that is exactly the reason why I am going in the opposite direction to the honorable and learned senator, because I know that in England the public have been robbed, times out of number, for the purpose of putting money into the pockets of private landowners. I know also that in Western Australia the same thing has occurred. The same condition of things existed in other States of the Commonwealth in years gone by, but as the result of their experience they concluded to alter it; and it was partly through the experience of England and partly, probably, through the experience of Western Australia, that South Australia and other States have had backbone and common sense enough to protect the general public against individuals, and so have made these laws. I hope that we in this Senate will take sufficient interest in the people to see that their interests are not sacrificed to those of Dne individual.

Senator Major GOULD

- I recognise the fact that the arguments adduced in the speech delivered by Senator Harney might, to a certain extent, induce honorable senators to follow out the idea which was evidently running in the honorable and learned senator's mind. But we must bear in mind that we have had experience with regard to the proposals now submitted by the Government, almost daily, and we are practically following out what has been the result of legislation in nearly all the States during the past few years. We have also to bear in mind that the circumstances of our States are entirely different to the circumstances of Great Britain. Here in our States all the works practically are done by the Government at the expense of the community at large, and the weak point in the argument of Senator Harney appeared to me to be that he failed to recognise the fact that the community as a whole is interested in the carrying out of public works, and that those works are not carried out for the benefit of one section of the community or of any private company, but for the benefit of the community as a whole and at the expense of every taxpayer in the community. That being so, it appears tome only a fair thing that we should protect the Government or the State as far as we reasonably can.



Senator Harney

- We should do equal justice.

Senator Major GOULD

- In dealing with a matter of this kind we have first of all to consider the position of the State and the position of the individual with whom the State deals. The individual's land is taken from him, and he is compensated with hard sovereigns. If the whole of his land is taken there is an end of it ; but if only portion of his land is taken, and the balance of the land left in his hands is materially advanced in value to an amount more than equivalent to the value of the land taken away from him, as between the State and the individual, is it not a fair deal to say - " We have made the balance of your land worth double what it would have been before this improvement was put on the land which was taken from you, and, therefore, we are not going to pay you this large sum of money"?

Senator Harney

- We confiscate half his land.

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Senator Major GOULD

- We do not confiscate the land. I am speaking of the position as between the owner of the land and the State, and surely in the dealing between these parties we must consider the position of the State, or the community at large, as much as the position "of the individual owner. If we do that, this becomes a matter of absolute justice. Let us follow Senator Harney's argument a little further than the honorable and learned senator saw fit to carry it himself. He says that if we leave a little bit of ground in the hands of the original owner he should be entitled not only to the value of the land taken from him, but also to the enhancement of the value of the land left to him, in just the same way as people adjoining him are entitled to the enhancement of the value of their land by the construction of the public work for which a portion of his land was taken in the first instance. The probability is that these men will be getting 50 per cent. more, because they will have a larger area of land than the person whose land was taken by the State. Under the proposal the honorable and learned senator would advocate and support, if he is going to do equal justice, why should he not say that if a portion of A's land is taken away, and B's land is enhanced in value to the extent of £1,000, A should also receive £1,000 as well? Take another case again where A's land is entirely taken away, and land belonging to B and C are in consequence increased in value, why should not A say that because his land is taken away for the erection of a public work and that has enhanced the value of adjoining blocks held by B and C to the extent of £1,000, he is also entitled to £1,000 ? We might carry this argument to such an extent that it would lead to the absolute ruin of the State attempting to carry out such a principle. All that we have to do is to consider the position as between the owner of the land and the State. If A, as an ordinary individual, chooses to improve his own land, and the improvement he makes enhances the value of the land held by B and C adjoining, are we going to give something to A in addition to the natural enhancement in value of his land by the expenditure of his own money, because his expenditure has also increased the value of the land belonging to B and C ? We cannot carry out that principle. A, instead of spending his own money, allows the State to spend money upon his land, and what claim then has he got to the enhancement of value due to the land taken from him. If we were going in for legislation on the betterment principle, it might be a fair thing to say that all whose lands are enhanced in value by improvements upon certain lands should assist in paying the cost the Government are put to. But that must be under a betterment Bill, and a Bill of a very different character from the one at present before the committee. If we are going to make this a betterment Bill, in addition to a Bill for the acquisition of land by the Commonwealth, we will have a very long job in front of us, because we will have all sorts of provisions to insert in order to make such a Bill work fairly and equitably in the interests of the community at large. I think that in this matter it is right that we should follow the principle laid down in the Acts passed by the various Legislatures of the State, and decide that as between the State and the individual we shall not penalize the State, because the action of the State has conferred an improvement in value upon property that the individual holds. I think the provision in the Bill is one that we might fairly, and should properly, accept.

Senator STEWART

- I have listened with very great pleasure, and a good deal of profit, to the very lucid arguments of Senator Harney with reference to this particular matter. I consider the honorable and learned senator's argument

is unanswerable. It certainly has not been answered by any of the honorable senators who followed. The position the honorable and learned senator takes up is that equal justice should be done to every member of the community. We have heard something about socialism here to-night. I profess to be a socialist, and the backbone of the creed of the socialist is, equal justice to everybody. I contend that this provision, so far as it applies to the individual whose land was taken, is perfectly fair ; but when we come to consider the matter in relation to other members of the community it is most unfair. Why should the person whose land is taken be placed in a position different from that of other members of the community? His land is increased in value by the resumption, but he has got to return a portion of that increase to the Government. The land belonging to other people and situated close beside him is also increased in value, but they are not called upon by the Government to return anything.

Senator Harney

- They have their land and the increase and he should have the same.

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Senator STEWART

- They have the increase without being called upon to return any portion of it to the Government, while he has to pay back a certain proportion of his increase to the Government. I wish to put them all on the one footing. If we could get at these other land-holders in the same way as you get at this particular landholder, I would say extend the principle to everybody, but it is impossible. The only way we can accomplish that is, first, by placing them all, as Senator Harney has contended, on an equal footing, and then levying a betterment tax all round. Suppose that on some future occasion the Commonwealth decides to levy a betterment tax. it will be taxing this particular individual twice. He will have paid in the first instance, and when the betterment tax is imposed he will have to pay again. That is a position in which no citizen should be placed. If the honorable and learned senator will move that this provision be excised, I will support him, with the -view of imposing a betterment tax on some future occasion. We will have laid the foundation on which we can build up the betterment principle, but if we go on in this fashion we will have no foundation. We will have inequalities which it will be impossible to smooth away when we come later to deal with the imposition of a betterment tax.

Senator Harney

- If this clause stands we cannot subsequently apply a betterment principle to this land, because it will be taxing it twice.

Senator STEWART

- That is just what I have said. We could not exempt the owner of this land, and he would very properly say that he had already contributed his share of the increment, and it was unfair to tax him twice.

Senator Dobson

- Have we any right to initiate the foundation of a taxation Bill in this House?

Senator STEWART

- The honorable and learned senator asks me if we have any right to lay the foundation for a taxation Bill. I think we have, and in any case I am going to proceed on the assumption that we have, until the contrary is conclusively proved. Even if I had not that object in view, desiring as I do that equal justice should be given to every one, I do not see why. one man, simply because a railway line touches or passes through his hand, should be compelled to pay back a portion of the increased value which accrues from the construction of the railway, while other people in the same locality, and receiving the same . benefit, are not called upon to contribute anything. I think we should consider everybody alike. That is a very good principle to begin with, but this provision does not do that. It is perfectly just so far as the individual concerned is affected, but it is not just with regard to other members of the community. If we could get at them in some fashion I would be quite willing to let the clause stand as it is, but we cannot.

Senator McGregor

- Yes ; we can resume their lands, too.

Senator STEWART

- This is going a little too far. The Commonwealth, I know, can resume any land, but we do not propose to do that in the meantime, and, perhaps, the more moderately we go to work the more we will be able to do. If the Commonwealth attempted to bolt such a big meal as the honorable senator suggests the probability is that it would not be able to digest it. I asked Senator Harney what his purpose was, and I

think I was quite justified in doing so, because the honorable and learned senator, after making an able speech, sat down without proposing any tiring. Does the honorable and learned senator propose to excise this provision ?

Senator Harney

- Yes.

Senator STEWART

- If the honorable and learned senator proposes that I will support him.

Senator O'CONNOR

-- I hope it will not be thought out of place if I offer a little advice to the new socialistic party, consisting of Senator Harney, Senator Walker, and Senator Stewart. I am glad to see the combination, and I hope it may long continue, but I would make a suggestion to the honorable senators, and that is that if they are so willing and anxious to bring about the principles of socialism, is it not better to take a little instalment to-day than to refuse any instalment until they can get the whole thing?

Senator WALKER

- We are all socialists.

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Senator O'CONNOR

- We are, and it is only a question of extent. I think I may describe myself in this matter as a practical socialist who, when he finds he can get a little bit of socialistic - benefit, does not throw it away because he cannot get something else which may be unattainable for many years. Coming back to the real matter we have to decide here, I have been much interested in the argument of Senator Harney, who put his contention in a very able way. But the honorable and learned senator has wandered' a good deal from the question we have to decide. The principle upon which all these acquisitions of land are based is that when we take land for public purposes and for the benefit of the community at large, it is not fair that an individual, one member of the public benefited, should pay for all the benefit. We must try and equalize the sacrifice as much as we can. Therefore we pay him the fair value of his land. We pay him also the amount of damage which has been done by a public work, but we pay him no more than that.

Senator Harney

- Under this Bill we do not pay him anything at all in some cases. We take half his land and give him nothing.

Senator O'CONNOR

- I think my honorable and learned friend is mistaken about that. If, over and above the value of the land we pay him, an additional value has been given to land by the expenditure of public money on a public work, why should we pay him any part of that? I admit it may be that other persons besides the owner of land taken have been benefited, but why should we pay the owner of land taken more than he has lost? Because, after all, that is what we have to deal with. The person whose land is being taken comes to us for compensation, and we are bound to give him the compensation which will put him in the same position as he would have been in, as regards the portion of land, before the work was constructed. We do that if we give him the value of the land, and the damages, and let him have the benefit, so far as it goes, of any additional compensation. Looking at the thing practically, we all know that, in most cases, the benefit which a man derives from the public work is infinitely greater than the amount which is deducted, as against the value of the land taken. For instance, if a road goes through a property, it makes accessible a property which was inaccessible before, and thereby adds 20 or 30 or 40 per cent. to its value.

Senator Charleston

- Not always.

Senator O'CONNOR

- I am making an assumption. I admit that it does not do so always, but there are many cases in which it does. Why should the person whose land is taken be paid the value of the whole land taken ? Why should not he who benefits so much also contribute something to the public work by which he benefits - why should he not contribute to the extent of having a set-off of any advantage which had accrued to him? That is a principle which I do not want to elaborate at any length, because I do not think it is necessary. If there is one thing more clear than . another it is that in Australia we have determined to apply this betterment principle wherever it is possible, and on this ground that where a benefit accrues to

a man, not by his own exertions or expenditure, but by the expenditure of public money and by the advance and prosperity of the community, if he wants to get any benefit from the community that must be taken into consideration. That is a principle which has not only been followed here, but which has been followed, and followed with increasing frequency, in the legislation of Great Britain herself. As Senator Harney has quoted a judgment from one of the Lord Justices of Appeal, I would mention that even such a House as the House of Lords itself has approved of the principle of betterment in relation to local works.

Senator Harney

- Equally distributed?

Senator O'CONNOR

- I find that-

As a principle this is really no longer debatable. Even so conservative a body as the Committee of the English House of Lords, after hearing all the arguments in opposition, have recently come to the conclusion that - " The principle of betterment - in other words, the principle that persons whose property has clearly been increased in market value by an improvement effected by local authorities should specially contribute to the cost of the improvement - is not in itself unjust, and such persons can equitably be required to do so."

Here, we cannot get hold of all those persons whose properties have been benefited, but we get hold of one who comes for compensation.

Senator Harney

- And the Government rob the one man.

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Senator O'CONNOR

- My honorable and learned friend need not talk about robbing, because, as a matter of fact, the person who comes for compensation has his claim truly and well adjusted, and there is no doubt everything is always awarded on the most liberal scale to persons whose lands have been taken compulsorily for any public purpose. I merely made that quotation to show that not only is it adopted in Australia and other parts of the world, but that even in Great Britain and amongst persons of the most conservative class of opinion the principle is recognised - whether you extend it far or whether you do not - that a person who derives a benefit from a public work when his land is taken, shall not have the total value of the land, but shall have the value of the land less the amount of benefit, which he, for his adjoining land has received. I hope the committee will not assent to the amendment.

Senator WALKER

(New South Wales). -

Senator O'Connor

is rather mistaken if he believes that in every case the owners are benefited by the construction of public works.

Senator Drake

- He did not say in every case.

Senator WALKER

- In Brisbane, an estate of which I happen to be a trustee, has been injured to the extent of thousands of pounds. We asked for a certain amount of compensation ; they offered us £600 odd; it went to arbitration and they gave us £1,200 or £1,300. Although we got that sum, we are poorer to-day by thousands of pounds owing to the severance which took place.

Senator O'Connor

- The estate was entitled to get damage for severance.

Senator WALKER

- We cannot get it under the brilliant system which exists in Queensland.

Senator FERGUSON

(Queensland). This principle operates very unjustly in some cases. Supposing that a railway goes through a man's home paddock, and cuts off the only permanent water supply, the portion not cut off is then valueless. The property

is

completely destroyed, and if the man owns any land adjoining, according to the last proviso, the

enhanced value of that land has to be taken into consideration as a set-off against the damage he suffers. But if a neighbour on the other side has a property which the railway does not touch in any way, he has the full advantage of the enhancement in value. It would be far better for the man if the Government took away the whole of his land. The house portion of the property is destroyed when his water supply is cut off, and the water supply portion is really valueless, because it is low, swampy ground. In a case of that kind, unless a man gets a very high compensation, he is a great loser by the railway going through his property.

Senator O'CONNOR

- Under this clause we are enacting that compensation can be recovered for the loss of the water to the adjoining land.

Senator Major Gould

- The owner is absolutely entitled to it.

Senator O'CONNOR

- Yes ; and under the law as administered in several States - in New South Wales, for instance - in a case of that sort, the man would be entitled not only to the value of the land taken, but to the amount by which the land adjoining was rendered less valuable by reason of cutting off the place where his water was ; he would be entitled to that wherever it was. So that whatever the law may have been in the case which Senator Ferguson was thinking of, certainly in this clause there is the most ample provision for doing justice in a case of that kind.

Senator FERGUSON

(Queensland). But supposing that the same man owns land adjoining which the railway has not touched, the value of that portion is set off against the damage done to the other portion, and that is where the injustice comes in.

Senator O'Connor

- Another recruit to the socialistic party.

Senator Harney

- Quite right.

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Senator CLEMONS

- I am quite certain we all recognise that Senator Harney has raised a most interesting discussion. I was at first under the impression that he was going merely to raise a discussion and not follow it up to its logical issue, and move that the proviso be omitted. I understand that he has moved that the proviso be omitted. That being so I think he will not object if I put his arguments in so clear a light that every honorable senator can see exactly what they mean. The obvious intention of the proviso is to see that the Commonwealth does no injury to an individual when it takes over his land ; that it leaves him, at any rate, in as good a position as he was in before it interfered. We all recognise the right and desirability of interference and we attempt to provide that the interference shall do no individual injury. What Senator Harney wants us to do is not merely not to do injury to any individual, but also so to legislate that we preserve the relative values of all persons properties. He wants us so to legislate that not merely we do not deprive any man of any value which is attached to his land, but that we also keep constant the ratio of value between his land and his neighbour's to the nth degree, to use an algebraic expression. I frankly confess that in that attempt we shall be trying to do a good deal more than we could possibly by any method of legislation succeed in achieving. Moreover, if his argument is followed out logically, it practically means that if we cannot benefit every one equally we should refrain from carrying on any works which will give a large amount of benefit to the community generally although the equality be not clearly maintained.

Senator Harney

- That is not my argument.

Senator CLEMONS

- Undoubtedly that is the logical issue of the honorable and learned senator's argument, because he says - "In this case if we do some work which will benefit B and C it is not giving the same amount of benefit to A." It is quite possible that we may do some work which, while it will not injure any one, will put some persons in a worse position while it puts others in a better position. In other words, by merely changing

the relative value of these persons lands we are not really doing any act we need feel ashamed of doing. Senator Harney says that unless we always keep constant the ratio of value to the nth degree we should not legislate in the way proposed. That is practically his argument extended to its logical issue. I venture now to ask him if he likes it presented in that form; if he is prepared to accept the logical conclusion of it ?

Senator Harney  
- I deny that that is the logical conclusion.

Senator CLEMONS

- I am sorry that the honorable and learned senator does, because I think it is perfectly clear that what .1 have said is the logical outcome of his arguments. He' declines to allow us to benefit the community unless by our action we are maintaining the ratio of values perfectly constant between any three or more persons.

Senator Harney

- We cannot reduce principles of justice to mathematics.

Senator CLEMONS

- I do not wish, especially as it is late, to elaborate this argument any further, but I am prepared to wait and, perhaps, to debate the question again if the honorable and learned senator can show me that this is not the logical outcome of his contention. If it is the logical outcome of his contention, then I shall suggest to him that his case is bad. If it is not the logical outcome of his contention, then I shall wait with interest to hear him suggest to me in what way my contention fails, in what way I carry his argument to a conclusion which is illogical.

Senator HARNEY

(Western Australia). - It seems to me that some honorable senators have misapprehended the position I took up. All I contended for was that so long as the clause remains there, in the absence of a proper betterment system, we were treating persons in the same neighbourhood unequally, and inequality is the principle of injustice.

Senator Clemons

- No.

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Senator HARNEY

- How often do we in our deliberations say - " Such and such a thing would be good, but we cannot impose it upon one, since we have not the means of imposing it equally on all." It is a proposition which we frequently use. Senator O'Connor has said that all this clause purports to do is simply to take the individual's land and to give him compensation, and that if the result of the work is that he derives as great an advantage from his share of the improvement to the neighbourhood, as he loses by the piece of land taken, he ought to get nothing. May I put to him the position from the Government point of view 1 If the Government require 100 acres of land, is it asking them too much to say - " You will be good enough to pay for the area what it costs in the open market, the same as Tom Jones or Robinson would have to pay "1 Surely, the Minister will not deny that that is a reasonable thing to ask the Government to do; and that is all we&gt;want them to do, because if they give for\* the 100 acres what anybody else would have to give, then they will take no account of those natural advantages which are incidental to the accumulation of human beings, and not to them or the other person. We have to recognise in society that if two or three persons club together, and build their houses, every additional person who\* comes adds an increment for which he renders no.immediate service to them. We recognise that as a principle incident to the accumulation of men in communities. Why should we in these particular cases interfere with that natural principle ? If a bank manager comes to a neighbourhood where a railway has been run, and wants to put up his building, he has to put down his money for his acre of land, and he cannot say - " Oh ! but my bank, you know, will improve the beauty of the town," and. other persons will come here on account of its erection who otherwise would not come." He cannot enter into these intangible unnatural forces which add to the value of things. He simply pays his money for that which he takes. But the Government, just because it is the Government, is going to say - " We have to buy the land for this railway for you, and we are not going to do what everybody else does - we are not going to pay you for what we take. You will be kind enough in our case to suffer a subtraction by reason of your share of an intangible benefit" which we say the Government get.

Senator Stewart

- Who is the Government ?

Senator HARNEY

- The Government, of course, is the State, but we cannot confuse things by always recollecting the Government. When they enter into contracts, we must have the thing done on some sort of precise lines.

Senator Clemons

- They are not the only persons with the right of compulsory acquisition.

Senator HARNEY

- Promoters of railway companies at home obtain the right of compulsory acquisition.

Senator McGregor

- They have to get that right from the people through the Legislature.

Senator HARNEY

- Certainly, they obtain liberty from the Legislature, but what does it say to them ? It says to them - " We give you the right to compel persons to allow you to take their land, if you pay for what you take." The Government here do no differently. All they say is - "Instead of deputing some body else to do it, we do it ourselves." There is absolutely no difference between the two.

Senator Clemons

- Legislative authority.

Senator Major Gould

- A great difference.

Senator HARNEY

- Must I really put it again? Where is the difference between legislative authority under which the Government say - "Tom Jones, go and take the land," and legislative authority under which the Government say - " Government, go yourselves and take it." Both of them derive their right from legislative authority. I do seriously press this question on the committee. I have no interest in the world except my conception of what I believe to be justice. It seems to me to be a grossly unfair thing to say to a man - " We want your land, and you will not be a sufferer by reason of our taking it, because we shall plant down its equivalent in sovereigns," and when you have taken his land and he says - " Put down the equivalent in sovereigns," the Government should answer - "My friend, the equivalent is the intangible and visionary benefit which you in common with your neighbours derive."

Senator Clemons

- It does not say " intangible and visionary."

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Senator HARNEY

- Does it not ? The Government say - "We want a hundred acres of land." The moment they speak, the hundred acres become worth £10,000 in the market. If a bank wishes to purchase a property of that kind it has to plank down its ten thousand sovereigns, and no matter how much the neighbourhood increases in value, and whatever the amount of good that arises from the work done, the person owning the property only gets what represents the market value of the land taken. But if the Government say exactly the same thing, "We want 100 acres of your land," they are not to put down their £10,000. How do the Government carry out their contract? They say that the whole neighbourhood has benefited, but that they will not give to the man whose land they have taken any share of that benefit. Is that fair ? Clearly it is not. If a private railway company takes a person's land they are compelled to pay for it. Why then should not the Government give the property-owner the market value of his land? What is the difference between the promoter who is deputed by the Government to take land compulsorily, and the Government that takes the land compulsorily? There is no difference - absolutely none. That is the reason for the position I have raised, and nothing could be stronger. If any honorable senator thinks it worth while to investigate the matter further, I commend the decision of the Privy Council in the case I have quoted. To reduce the matter to an algebraical proposition, individuals whose property adjoins the land taken by the Government retain the value of that land plus x, the value to the neighbourhood; but if the land is taken, they substitute money for land - they give to the owner the value of his land minus x. Is that fair ?

Question - That the words proposed to be omitted stand part of the clause - put. The committee divided - Ayes ... .. 18

Noes ... .. 5

Majority ... .... 13

Question so resolved in the affirmative.

Amendment negatived.

Clause agreed to.

Clause 18 -

Such compensation shall bear interest at the rate of 3 per cent. per annum from the date of the acquisition of the land until payment of the same is made by the Commonwealth to the claimant, or until the same is deposited in the Treasury as hereinafter mentioned.

Senator MILLEN

(New South Wales). I should like to draw the attention of the Vice-President of the Executive Council to the rate of interest proposed under this clause. Sub-clause (2) says that the rate shall be 3 per cent. per annum. That appears to me to be altogether too low. I do not wish to suggest any figure which would be unfair to the Commonwealth, but, at any rate, the States themselves do not borrow at 3 per cent. And if they are paying more for their public loans than 3 per cent. it is not unreasonable to say that the Government shall pay at least the rate of interest that they would have to pay if they borrowed. I would suggest that 4 per cent. should be substituted for three. That rate is low enough. Very few people who have money invested in property are obtaining such a low return as 4 per cent.

Senator Clemons

- They are glad to get it.

Senator MILLEN

- Fortunately, New South Wales is not reduced to that position yet. I move -

That the word " three," line 2, be omitted with a view to insert in lieu thereof the word " four."

Senator DOBSON

- I have pleasure in supporting the amendment. Four per cent. is the very lowest rate upon which money is lent on mortgage. Lenders are paying 4 and 4½ percent. If the security is gilt edged, with a large margin, you can borrow at 4 per cent. I believe that two-thirds of the land the Government will have to take for the purposes of the federal capital will be found to be mortgaged, and none of the mortgagors are paying less than 4 per cent. They are probably paying 4 per cent. and upwards; and if you take the lowest minimum rate for mortgages, 4 per cent. is a fair thing. Then I desire to point out that I think that the rate of interest ought to be taken, not from the date of notification in the Gazette, but from the date on which the owner surrenders possession of the land to the Commonwealth. It appears to me that, although this may not be a large matter, it may run into some hundreds of thousands of pounds if the Government are taking over large properties. When the Government are acquiring land for the capital, and take up enormous blocks of land, the purchase money will be considerable, and whether you pay a man 4 per cent. from the date of notification in the Gazette, or from the date the Government gets possession, will be a very different thing. If the Minister will agree to make it date from the time of taking possession by the Government, and that the interest shall be at the rate of 4 per cent. I shall be satisfied.

Senator O'CONNOR

- I cannot agree to this amendment, but as it is likely that there shall be some discussion upon it we may as well report progress at this stage.

Progress reported.

PUBLIC SERVICE BILL

Bill received from the House of Representatives, and (on motion by Senator O'Connor) read a first time.

PAPER

Senator O'CONNOR

laid on the table the following paper : -

Return to the order of the Senate, dated the 14th June, giving full particulars concerning the election of senators for New South Wales.

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22:36:00

Senate adjourned at 10.6 p.m.