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1901-06-25

Senate.

The President took the chair at 2.30 p.m.

SERVICE AND EXECUTION OF PROCESS BILL

Second Reading

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Vice-President of the Executive Council

Senator O'CONNOR

. - I move -

That the Bill be now read a second time.

I am aware that this Bill and the next one appear on the business paper by accident to-day. As I understand the Senate is assembled really to deal with the incomplete matter with reference to the Supply Bill, but as these two orders of the day are on the paper, and it is well that we should get on with business whenever we can, I propose to proceed with both Bills as far as I can get to-day. Of course if there is any very serious objection by honorable senators on the ground that some of the provisions require to be discussed more fully, I shall be willing to listen to a suggestion not to go beyond the second reading stage. But it seems to me that as these are measures which must be dealt with, and to which there is no objection in principle, we may at least get to that stage. The Bill which I now ask the Senate to read a second time is introduced to carry out the power given in sub-section (24) of section 51 of the Constitution Act- that is the section which gives the Parliament power to make laws relating to the service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States. Honorable senators will no doubt be aware of the condition of things which makes it necessary to pass this legislation. Each State is in regard to the other, in the application of its laws, exactly in the same position as a foreign country. The courts of each State have a jurisdiction which extends only within the limits of the State, and therefore no process of any State has any operation whatever outside its own limits. There are certain modifications of that rule to which I shall refer hereafter. For instance, let me give an ordinary illustration. Suppose a man contracts a debt in Victoria, and there is no doubt that it is justly due, and he goes over to New South Wales to live; the courts of the latter State have no more jurisdiction over him than if he were living in Russia. Of course it must be quite evident that when federation has made these States practically one in regard to all matters of business, a state of things which enables persons to evade their obligations in that way, and which prevents the processes of the different States from going right through Australia, ought to be modified in some way, and this measure deals with that difficulty. I have said that there are certain modifications of the law that the State has jurisdiction only within its own limits, and that refers in some respects to criminal jurisdiction, and also in some respects to the effects of judgments.

Senator DAWSON

- Should we not have the Bill before the honorable and learned senator proceeds to speak to the second reading ?

Senator O'CONNOR

- I thought that the Bill was here. I believe that each honorable senator has received a copy of it.

Senator BEST

- May not copies of the Bill be placed on the table ?

Senator O'CONNOR

- That would be very convenient if it could be done. I was pointing out that then: is a modification of the strict rule confining the jurisdiction of the State within its own limits, which arises from what is called the comity of nations - the principles of international law. It has always been recognised that the judgment of a court of competent jurisdiction of one State is recognised in another State. At one time the only way of enforcing a judgment giving effect to that international rule - comity of nations - was "by bringing an action" on the judgment, but in all States, all the States of Australia at all events, there have been processes by which the effect of a judgment might be obtained without bringing an action upon it, by filing it in a court and issuing execution upon it from the court of the State in which the memorial has been filed. There has been a modification to a certain extent of the strictness of the rule in that respect.

Senator Keating

- But that has only been done by statute.

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Senator O'CONNOR

- It has been necessary to pass statutes in the different States to bring that about. There has also been a modification in regard to criminal law, first of all by the process which is known as the backing of warrants. A warrant issued for the arrest of a person in one State comes before a magistrate in another State ; it is backed by him there ; it is executed by the police of that State, and the criminal or offender having been brought before the magistrate of the State in which he is arrested, on inquiry is made ; and he is then remitted to the original place where the offence was committed. . That process, as I say, has enabled the criminal law to be carried out throughout Australia in a certain way, but with a good many unnecessary limitations. There is also an English statute, called the Fugitive Offenders Apprehension Act, which enables the same kind of thing to be done in all the States - the backing of warrants - but it extends perhaps to the more serious offences. The proposal of the . Government in this measure is one which has been dealt with already in a measure passed by the Federal Council of Australasia. The Australian Civil Process Act of 1886, which applies, I think, to all' the States except New South Wales, is very similar in its provisions to the portions of this Bill which deal with civil process. There was also an Act passed at the same time by the Federal Council called the Australian Judgments Act of 1886, which has very similar provisions to those which are in this Bill regarding the recognition and the enforcing of judgments ; so that honorable senators will see that this Bill is really founded to a very large extent upon the departures already made from the rigid rule of law to which I have referred. That is to say, with regard to civil process, the proposals here are very much those of the Federal Council's Acts of 1886 ; with regard to the recognition and enforcement of judgments, they are very much the same ; and with regard to .the following out of criminal process, they are to a very large extent the same as the laws in force now in reference to fugitive offenders, as carried out between the States by the backing of warrants. Having made that explanation as to the general position, I would invite the attention of the Senate to the principles of the measure itself. In the first place, it deals with the initiation of civil process. The commencement of a proceeding of any kind, whether it is an action at law, or a suit in equity, or before any of the courts for a mandamus or a prohibition, is treated as the initiation of civil process. Any summons or writ, or however the process may be described, issued for that purpose, may be served in any portion of the Commonwealth. Before it is served out of .the State in which it is issued, it must bear a special indorsement, which is mentioned in clause 5. That indorsement requires the person on whom it is to be served to give an address within five miles of the place from which the writ is issued at which process may be left and notices served. The Bill limits the time for appearance under a summons or writ of that kind to not less than 45 days in regard to Western Australia or the Northern Territory of South Australia, and in other cases to 30 days. That is to say, the currency of the writ where it has' to be served in Western Australia or the Northern Territory cannot be less than 45 days, and in the case of other States it may not be less than 30 days.

Senator DAWSON

- Is it in order to debate the details now 1

Senator O'CONNOR

- If the honorable senator will allow me I will make my speech in the way I think best. It is necessary to explain these matters, because details of the kind are most important in the carrying out of the measure. The summons having been issued with these precautions, it may be served in any portion of the Commonwealth, and if the person on whom it is served chooses to enter an Appearance, then wherever he is, and under whatever circumstances he enters his appearance, he submits himself to the jurisdiction of the court. .But supposing he does not enter an appearance and allows judgment to go by default ; then clause 10 provides for cases in which judgment may be given against him notwithstanding his failure to appear, and that is the most important portion of the whole Bill. It is quite obvious that it would have been a very easy matter to provide that the process once being served upon him, he should be in the same position as if the process had been served upon him in the State out of which it issued. But if we had provided that, then in regard to some trivial debt, say a matter of £20, a person in Townsville might have sued a man in Perth, have had this process issued, and dragged him all the way to Perth to get the

matter determined.

Senator DAWSON

- That would be within the discretion of the Judge ?

Senator O'CONNOR

- An illustration of that kind shows how difficult it would be to frame a measure with anything like fairness or reasonableness to persons interested if such- a very large power were granted, and such a very large scope were given to the enactment. Therefore it has been found necessary to limit the scope of the Bill in some way. We propose to limit its scope in exactly the same way as it was limited by the Act of the Federal Council. That is to say, it is only in certain cases that a judgment can be signed where the defendant does not appear. Those cases may be roughly described in this way : They are all cases in which either the property in question is situated within the State issuing the process, or the contract is made or broken, or the wrong committed in the State issuing the process, or the document, or other deeds which are the subject of the action have reference to property of different kinds within the State issuing the process.

Senator Keating

- Practically the principle of international law.

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Senator O'CONNOR

- In other words it is practically the principle of international law. The only cases in which the court will have jurisdiction without the appearance of the defendant are cases which, as the legal phrase goes, savour of the locality from which the writ is issued. There can be no hardship in a law of that kind. On the other hand I think it will be admitted that it only carries out one of the main objects of our union, and that is ' to make our business relations as convenient as possible, and strike out all those limitations of jurisdiction which interfere with the proper, fair, and reasonable carrying out of business. Not only is that the limit as to subjects, but it must also be shown that the defendant has either had the writs served upon him personally or that endeavours have been made to serve it personally, and that it came to his knowledge. It must also be proved that he - 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.

Under these circumstances a writ served in any part of Australia will be effective. The Judge, on being satisfied in the matters I have referred to, may make an order that the case may go on as if the defendant were present ; and if judgment is recovered it may be enforced in the same way as any other judgment of the court.

Senator DAWSON

- It is a bad thing for senators, because their address is Parliament House all the time 1

Senator O'CONNOR

- I feel satisfied that senators will never come under the operation of this measure at all. , I hope they will not come under it either as plaintiffs or defendants. We all want to keep out of the law - except professionally. There is another important provision in regard to criminal proceedings. Where a summons has been issued by the court of a State in regard to any offence which has been committed in that State, that summons may be executed in any part of the Commonwealth, and disobedience to that summons will be visited by the same consequences as disobedience to a summons issued in any part of the State itself. That is quite reasonable. If a person commits an offence in a State, why should not justice follow him wherever he goes?

Senator DAWSON

- Can any justice of the peace issue that summons ?

Senator O'CONNOR

- Yes.

Senator Ewing

- It is not where an offence is committed, but where an unprincipled person lays an information against another, that you want some protection. An ordinary justice does not make much inquiry before he issues a summons or a warrant.

Senator O'CONNOR

- The honorable and learned senator is quite right. In the administration of justice there must be cases where the processes of the law are misused. But, on the other hand, in the great bulk of cases warrants are issued after a reasonable amount of care has been taken. Besides that, as suggested to me by Senator Keating, if a magistrate has to issue a summons which is to be served out of the jurisdiction of the court, it is not likely that he will issue it without a considerable amount of care.

Senator Ewing

- That may be so if it be issued by a resident magistrate or police magistrate."

Senator O'CONNOR

- That is a matter of detail. I can assure the Senate that it has not been at all an easy matter to deal with the subjects included within this Bill, and I shall be quite willing to consider any suggestions that may be reasonable. The Government have considered the Bill fully. We believe that this is the right form in which to carry out the idea, but I shall be willing to listen to any suggestions upon matters of detail such as that the honorable senator has mentioned. The next subject dealt with by the Bill is also an important matter - that is, the process for the purpose of compelling the attendance of witnesses. As honorable senators are aware, the process of each court does not extend beyond the State. Therefore, if at the present time you wish to subpoena a witness in a case in Victoria, your process does not run outside the State of Victoria, and you have to examine a witness by commission - *de bene esse*, as it is called - or obtain his evidence in some other way. It is proposed in this Bill to enable the subpoena of any court of the Commonwealth to run throughout the Commonwealth. If the witness attends on the subpoena there is no trouble about it, and no necessity for resorting to the course permitted by legislation. On the other hand, if the witness fails to attend, under clause 14 the Judge or justice from whose court the subpoena issues may make an order for the service of the subpoena in any part of the Commonwealth, and if that summons is disobeyed, a warrant may be issued to bring the witness before the court.

Senator CLEMONS

- What provision is made in regard to the payment of the expenses of the witness ?

Senator O'CONNOR

- That will be provided by the Judge or justice who makes the order. I intend to make it a little clearer than it is that the Judge or justice who makes the order will have power to make it subject to such conditions as he thinks fit. It may be made a condition that the expenses shall be deposited or paid into court; or that the Judge shall be satisfied that the expenses will be paid, or that there will be a sufficient amount of conduct money given to the witness before he starts from his home. Those conditions may fairly be left in the hands of the Judge or justice who issues the subpoena. If the subpoena is not obeyed, obedience may be enforced by the issue of a warrant for the arrest of the witness.

Senator Keating

- Not if there is no tender of conduct money 1

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Senator O'CONNOR

- No ; only if the proper conditions are observed. In this Bill we extend the limits of the present law, and leave it to the discretion of the Judge or justice who issues the summons to fix terms which may be reasonable before leave is given. The matter also comes before the Judge or justice again before he issues his warrant in case of disobedience.

Senator Ewing

- It is a principle of common law that you must tender reasonable expenses and conduct money in a civil process.

Senator O'CONNOR

- No doubt it is. That also would have to be done under this measure.

Senator Keating

- You cannot get commitment for disregard of the subpoena before you have proved that you have tendered the necessary expenses.

Senator O'CONNOR

- That is so; and we think a witness outside a State should be in no worse a position than a witness inside a State. I have already said that there is in operation a system of backing of warrants by which offenders who escape from a State out of which the warrant issues may be arrested and brought back. The general

principle of the clause as it is drawn is that after a warrant issued in one State for an arrest for crime passes into another State, the magistrate in that other State, if satisfied, may back the warrant or indorse it as if it were served in that State. The warrant being indorsed for service in that State, the person may be arrested and brought before the magistrate who originally issued the warrant. After consideration, I think that is a clause that might be amended so as to make it a little bit less stringent. I will have amendments prepared, which will be printed and circulated before the Bill gets into committee, and which will affect the operation of the clause in this way. It is intended that the magistrate to whom the warrant comes from the State of issue shall indorse it ; but he will indorse it in such a way that the person when arrested shall be brought before him. That is to say, he will be brought before the magistrate in the State in which he is arrested, and that magistrate will have power to inquire, whether the offence is a bailable offence or not. If it is, the magistrate may give bail with the condition that the person is to appear in the original State of issue.

Senator Dobson

- Will that provision be in the Bill?

Senator O'CONNOR

- It will be in the Bill. In addition to that, there will be a special clause taken from the Fugitive Offenders Apprehension Act under which power will be given to the magistrate to inquire into the case. If it appears to him that the offence is trivial or frivolous, and that under all the circumstances it would not be right or just to have the person sent under arrest to the State in which the writ was issued, the magistrate may admit him to bail, or discharge him altogether. That would prevent the misuse of the process ; because there is no doubt that processes of this kind are liable to be misused. The issue of a warrant for a trivial offence and the sending of it to some remote part of the Commonwealth, when it would be necessary for the person arrested to be brought back, would be an abuse of the process. Under such circumstances the justice or Judge will have power to inquire sufficiently into the merits of the matter, to decide whether it is a frivolous offence or not ; and if he thinks it is not a fair case to send back to the State in which the warrant was issued, he may discharge the accused or give him bail.

Senator DAWSON

- But what about the man who makes the frivolous charge ?

Senator O'CONNOR

- The courts have sufficient power to deal with him. We are now dealing with the execution of those processes, and I think the provision I have suggested will secure that the power is not abused.

Senator Dobson

- Should not the working of that provision be put in the hands of a Judge or stipendiary magistrate ?

Senator O'CONNOR

- If you do that, you may impose infinitely more hardships on the man arrested.

Senator Clemons

- Are you not giving a Judge power to override the decision of a magistrate in another State ?

Senator O'CONNOR

- I do not think so. If these arrests could only be made in another State on an order made by a stipendiary magistrate, it would be very hard. The person arrested would, in some parts of Australia, have to travel perhaps 200 or 300 miles in order to get to a stipendiary magistrate, when he might be released on bail by a justice of the peace living a few miles off. We must trust these important duties to the ordinary justice of the peace. Although in many cases the powers given to justices of the peace may not be properly used, I think that in a great number of cases the justices do very good and useful work.

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Senator Best

- If the offence is a trivial one, it is a serious matter for the State to be put to the expense of the arrested person travelling to and fro.

Senator O'CONNOR

- I am merely indicating the nature of these provisions. I am dealing with this matter more in detail, because it seems to me that the clause as drawn will have to be safeguarded in the way I have suggested. The only remaining matter to be dealt with is the question of the enforcement of judgments. The Bill deals with that subject in this way. Where a judgment is obtained in a State the person obtaining

the judgment may get a certificate from the court out of which the judgment is issued. He may file that certificate in a court of corresponding jurisdiction in any State of the Commonwealth. When it is filed in that other court, it will be treated and acted upon in the same way as if it were a judgment of that State. That is to say, if a judgment is obtained in Queensland from the District Court of that State, and it is known that the man affected is living in New South Wales, the plaintiff gets a certificate and files it in the District Court of New South Wales. It then becomes a judgment of that court and execution may be issued upon it as a judgment of that court.

Senator Clemons

- Of that court only ? Senator O'CONNOR.- No : it may be filed in every court in the Commonwealth. It then becomes a judgment of any court of the Commonwealth and execution may be issued from any court of the Commonwealth.

Senator Clemons

- Will it have to be satisfied in every court ?

Senator O'CONNOR

- No, only in one court. It is on the same principle as concurrent rights. This is a concurrent judgment, which may exist in several States at the same time.

Senator Ewing

- It is practically the condition at present existing.

Senator O'CONNOR

- Practically ; but before a judgment can be executed, it is necessary to satisfy the court that the amount for which the execution is to be imposed is actually due, and that the person disobeying the injunction is really not obeying it. The Judge or magistrate has to be satisfied that the judgment is unsatisfied before he issues the execution. With regard to the difficulty suggested by Senator Clemons, who asks what is to happen supposing there are two or three courts in which ' these judgments exist, I reply that' the court must be' satisfied that the judgment has not been satisfied in some other State before it allows the process to be issued. These are all the material points 'dealt with in this Bill, and I think the Senate will see that what it seeks to do is to give to the whole people of the Commonwealth the real benefit of unity in so far as that can be carried out with justice to the inhabitants of each of the States. Of course the High Court will have jurisdiction over the whole of Australia. Its processes will run over the whole continent, and the effects of its processes will be regulated and governed only by its own rules, orders, and directions: But with regard to the different courts of the States; although it- is right that the operations of their processes should be extended, it would not be fair, right, or' convenient, to extend them more than is necessary and has been recognised to be necessary by the principles of international law. I think honorable senators will find, when they look into the details of this measure, ' that it carries out those principles, and that in its results it will enable the processes of the courts of the different States to be carried out efficiently, and at the same time with due regard to the prevention of hardships, or the misuse of those processes.

Senator DAWSON

- What is the meaning of the term- "The Australian register of judgments ? " Is that an official document ?

Senator O'CONNOR

- Yes. Every court will be required to keep what is called an " Australian Register of .Judgments."

Senator Keating

- There is one in existence already.

Senator O'CONNOR

- In the register of judgments will be entered up the judgments that are filed in the different States. Take, as an illustration, a judgment obtained in Victoria. It is desired to register it in New South Wales. You may go to the corresponding court in. New South Wales, and ask to have the judgment registered in the register of Australian judgments kept there. If any one wishes to find out what judgments are registered against a man in different parts of Australia, he will go to the Australian judgments register in each of those courts.

Senator Best

- Although the judgment may have been satisfied in one of the other States?

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Senator O'CONNOR

- Not necessarily. Senator Dawson. - Suppose the registers in the different States come into conflict ?
Senator Harney

- The honorable senator means, suppose a State register differs from another State register 1 . Senator O'CONNOR.- They cannot differ. Let me give an illustration. Suppose there is a judgment on a promissory note obtained from the Supreme Court of Victoria, and you find that the defendant has gone into New South Wales. You want to get the benefit of the judgment against him there. You go to the Supreme Court of New South Wales, and register the judgment in the register of Australian judgments kept there. It is exactly the same judgment, only you have a judgment of the Victorian High Court registered in the Australian register of judgments in New South Wales. They must be exactly the same, as one is a copy of the other.

Senator DAWSON

- Take the divorce laws for instance.

Senator O'CONNOR

- The principle is precisely the same, whatever the judgment may be. When a judgment is satisfied it will be discharged, and provision will be made to record its discharge. Some regulation will have to be framed with regard to this matter. No doubt there will have to be a provision where a judgment is paid off in New South Wales for instance, that under the Australian register there shall be some way of indicating the fact to the Victorian court. I would point out to the Senate that there is power to make regulations under the Act, and this is one of the things which will have to be dealt with by regulation. We cannot provide for all these things in a measure of this kind.

Senator Ewing

- The person paying off a judgment in one State will see that its discharge is recorded in the others.

Senator O'CONNOR

- Exactly, he will see that it is done. I shall be willing to answer any question in committee, but I do not think there is anything more that I can usefully add on a general discussion of the matter.

Senator EWING

- I do not wish to say much on this Bill, but I desire to take this opportunity of asking the leader of the Government, whether, as a general rule, Bills are sent to the Attorney-General or to some one representative of each of the State Governments in order that the State Governments may have an opportunity of seeing whether there is anything in them to which they decidedly object. I am not referring particularly to this Bill. For instance, there might be a matter in the Post and Telegraph Bill to which they object, and they should have an opportunity of communicating with their representatives in the Senate, or the House of Representatives. That Bill treats of local matters to a very large extent, but the State Governments know practically nothing of it, unless they receive copies of it from the Commonwealth Government.

Senator Drake

- After the first reading ?

Senator EWING

- As soon as possible. An endeavour should always be made to give sufficient time between the first and second readings to enable the State Governments to consider the measures where practicable.

Senator O'Connor

- It is quite impossible to promise that.

Senator EWING

- I know it cannot be done in every case, but there are many instances in which such a course might be adopted.

Senator Drake

- I think the State Governments receive all our papers.

Senator EWING

- That is just what I desire to know. I think that as soon as they are printed copies of the Bills ought to be sent to the State Attorney-General or some officer on behalf of the State Governments in order that we might know what they have got to say in regard to the matters we are discussing. It is easy for the State of Victoria to bring its views on the various Bills before the Commonwealth Parliament, or for the New

South Wales Government to do so. With regard to Western Australia, however, a Bill in which the interests of that State are perhaps, in their view, sacrificed, is put through before they hear a word about it, and consequently they have no opportunity of protesting.

Senator O'Connor

- Surely that is one of the duties of the representatives of Western Australia ?

Senator Clemons

- Senator Ewing and other senators from that State are in the Senate.

Senator EWING

- As we are representing all the States, I think we ought to be allowed, as far as we can, the assistance of the Executive of the State to which we belong in bringing State matters under the notice of the Senate.

Senator GLASSEY

- That is impracticable.

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Senator EWING

- For instance, many points in the Postal Bill might not occur to me as a layman, which would immediately strike a person controlling the department in Western Australia. Then, too, we have lately been legislating in regard to the Railway department. The Railway department may have views on the question which they would desire to submit to the representatives of their State. Although I think it should not be made a rule, because it could not always be applied, I am of opinion that it is desirable that the Government should adopt the course I have suggested as far as they possibly can. Wherever possible they should let the State Governments have copies of the measures which it is proposed to introduce in the House of Representatives or the Senate, in order that they may communicate with their representatives if they desire to do so.

Senator DOBSON

- This Bill is so essentially one for committee that all I desire to say at this stage is that I indorse the remarks of Senator Ewing. I have already spoken to one of the parliamentary draftsmen about the matter, and I did so when. I saw that one of the Federal Bills repealed a number of Tasmanian statutes. I suggested that he might very well confer with the Attorney-General, and make it a practice to send every Bill, as soon as it had been adopted, to the drafting department or the Attorney-General of each State, so that the Attorney-General might at least check the repeals and see that they were in order; and that some sections which might be stowed away in an Act the title of which did not enable one to find them were not omitted. I think we might ask the parliamentary draftsman or the Attorney-General of each State to send back the Bills together with their remarks and suggestions thereon. I do not mean that we should adopt a practice which would delay a Bill for one hour. Supposing we pass this Bill by six o'clock to-night, the State Attorneys-General or parliamentary draftsmen of any State might look through it, and send their suggestions back long before the other House had dealt with it. It is quite true that both lawyers and laymen from each State are in the Senate, but I do not think we have the time or the books and Acts at our fingers' ends to enable us to deal with these matters quite as readily as the Attorney-General or parliamentary draftsman of the various States would be able to do. Very little extra work would be thrown upon the legal officers of each State, because- 39 subjects are taken away from the States by the Commonwealth. They might, therefore, do a little work that would help to make perfectly plain and put in proper order the federal legislation. The very greatest good' might come from a practice of the kind.

Senator O'CONNOR

(New South Wales- - Vice-President of the Executive Council). - I only rise to say a few words in reply to the remarks of my honorable and learned friends Senators Ewing and Dobson. I would point out to those honorable and learned senators that there would be very great difficulty in carrying out their suggestions. The Parliament of the Commonwealth is appointed to legislate upon certain subjects, and members are charged by the people of Australia with that duty. They must carry out that duty. Every State and the officers of every State know what the subjects of legislation are. It appears to me that they ought to watch the legislation of the Commonwealth, and that they ought to see for themselves that no Bill is passed without the attention of their representatives being called to it, and representations being made in the proper quarter. It would be impossible to arrive at any kind of agreement with the legal officers of the different States, for a very practical reason. Pot1 example, a Bill like this is introduced. The Bill is probably

in a very different form from that which it assumed when it first left the hands of the parliamentary draftsman. It has to be considered, and it may be remodelled and altered in many different ways.

Senator DOBSON

- AVE do not suggest that the Bill should be sent to the State officers until it has been finally settled and is ready to be put on the table.

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Senator O'CONNOR

- Even then it may be amended in the most important particulars in the Senate itself. Therefore it is impossible to arrive at any kind of arrangement with the Attorney-General or the parliamentary draftsman of any State that the Bill shall be in a form in which it will satisfy them. I quite see at once that as a matter of courtesy the officers of the Commonwealth should give every facility to any of the legal officers of the States to know what is going on in the way of legislation. That will be done, and as far as possible it has always been done. AVE have no desire to steal a march on any State, and if the legal or any other officer of any State wishes to have information about legislation that is proposed, it will be given most freely and fully. I may mention that when the Inter-State Commission Bill was in settled shape, it was placed in the hands of persons in the States who are most familiar with railway matters, and who are most interested in the form it will finally take. I can assure the Senate that the courteous treatment of any application for information will be continued, and the Government will always facilitate in every possible way the spreading of information amongst the officers of the State in regard to any matters in which they are interested.

Senator Ewing

- Could not the Government give them - a copy of each Bill 1

Senator O'CONNOR

- I could not undertake that.

Question resolved in the affirmative.

Bill read a second time, and committed proforma

STATE LAWS AND RECORDS RECOGNITION BILL

Second Reading. . Senator O'CONNOR (New South Wales - Vice-President of the Executive Council). - I move

That the Bill be now read a second time. This is another Bill in the carrying out of the provisions of section 51 sub-section (25) of the Constitution Act under which power is given to make laws relating to 'the recognition throughout the Commonwealth of the laws, the public Acts and records, and the judicial proceedings of the States. The necessity for this measure arises in this way: In all the States certain matters are recognised in the proceedings of courts of justice as a matter of course. For instance, the Acts of Parliament of each State are recognised in the courts of the State. Matters which are published in the Government Gazette are recognised. Proclamations can be proved by putting in the Gazette, and by-laws can be proved in the same way. Judicial notice is taken of the signature of different officials in the different States. Certain public documents are provable merely on their production in the courts of the different States. But, as I said in explaining the principles of the last measure, all this applies only within the limits of the particular State. When we go outside the State then each of these things has to be proved as a piece of evidence, just as if it was something that had taken place in some foreign country. It is to obviate that that this Bill is introduced. The purport of it is this : First of all, in the High Court and in every Federal Court and every State Court it makes the Acts of the State Parliament recognisable judicially, and all proclamations, as- evidenced by the Government Gazette of each State, and as recognised in each State. Every public document which would be provable according to the laws of the State, on its mere production, is admissible in the same manner as evidence.

Senator DAWSON

- Is it provable by signature ?

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Senator O'CONNOR

- What I am referring to now are documents which would not be provable by signature- public documents - such as the commission of a Judge, or a Royal commission to take evidence. They are proved by the production of the commission with the seal upon it. Take the case of a commission in New South Wales -

it would be provable in New South Wales by simply putting in the commission with the seal attached to it, that being a public document. Under this Bill the document could be produced in Victoria and a court in Victoria would take judicial notice of it just as if it were sitting in New South Wales. In other words, this Bill relieves the courts of the States and the courts of the Commonwealth from the technicalities of proof which would otherwise be necessary in connexion with matters of -this kind. It puts the court of every State in exactly the same position as the State in which the document is issued in regard to proof. I think the Senate will see that this is a necessary measure. It does not go beyond the necessities, and it is practically on the same lines as the Federal Council Evidence Act of 1880. " Question resolved in the affirmative.

Bill read a second time.

In committee :

Clause 4. " Short title."

Senator O'CONNOR

(New South Wales Vice President of the Executive Council). There is really nothing in this Bill which is not of a merely formal . and technical character, and I propose to ask the committee to go right through with it.

Clause agreed to.

Clauses 2 to 18 agreed to.

Clause 19-

The provisions of this Act shall be in addition to and not in derogation of any powers existing at common law or given by any law at any time in force in any State.

Senator DAWSON

- What is meant by this clause ? -

Senator O'CONNOR

- I do not wonder at the honorable senator asking the question, because it can only be understood by a lawyer. I think the lawyers will readily understand the necessity for the provision. There are principles of common law which are applied to the rules of evidence, and this Bill declares that its provisions shall not cut down the common law powers of dealing with these questions. They will aid and help the common law powers in dealing with them. It is quite impossible to provide for all the cases which may possibly occur, so, to get rid of technicalities as much as possible, it is made clear that we shall still have the old common law powers.

Clause agreed to.

Bill reported without amendment ; report adopted.

Senator O'CONNOR

(New South Wales - Vice-President of the Executive Council). - I move -

That the third reading of the Bill be made an order of the day for to-morrow.

Senator DOBSON

- Before we allow the third reading to go, I wish to ask, does Senator O'Connor think that this Bill and the previous one contain all the requisite clauses with reference to the important work of the curators of intestate estates? For instance, does a suit, being an original proceeding--

Senator O'Connor

- That is dealt with in the other Bill.

Senator DOBSON

- AH orders then made by a Judge - he makes them in Tasmania, and I suppose the practice is the same throughout the States- - would come under this Bill j but would it cover the orders which are made by the curator himself ? It is rather an important matter to see that the curator is included in the Bill.

Senator O'Connor

- Every order that can be judicially recognised, I think is included here.

Senator KEATING

- I hope that in the future honorable senators will get a copy of all Bills a little in advance of the time at which they got these two Bills. I have been unable to devote that amount of consideration I should have liked to give to these two Bills, from the mere fact that I did not receive copies of them until after I entered the chamber this afternoon.

The PRESIDENT

- I understand that immediately a Bill is read a first time a copy is sent to every honorable senator.

Senator KEATING

- I did not receive copies of these two Bills.

The PRESIDENT

- Copies were sent to the honorable and learned senator's address.

Senator KEATING

- I received the Votes and Proceedings and other papers, and also copies of amendments proposed to be inserted in Bills before another place, but I did not receive a copy of either of the two Bills which have been considered here to-day.

Senator Sir Frederick Sargood

- I had mine on the- 14th.

Senator O'Connor

- It must have been, by accident that the honorable and learned senator did not get his copy.

Senator KEATING

- It may have been so, seeing that other honorable senators have received theirs. I should, however, like the third reading of this Bill to be deferred till later than to-morrow if it is convenient to the Minister.

Senator O'CONNOR

(New South Wales - Vice-President of the Executive Council). - This is a very short Bill- it is merely formal - and I would like to get it down to the other House as soon as we can. I think the honorable and learned senator will see that there will be plenty of time for him to look into the Bill before the third reading is moved to-morrow.

Question resolved in the affirmative.

SUPPLY BILL (No. 2):

The PRESIDENT

- I have to report that I have received the following message from the House of Representatives -

Mr. President

:

The House of Representatives having made the amendments to the Bill ordered by it to be made last Friday, as indicated by message of that day, now returns the Bill for the consideration of the Senate.

W. HOLDER,

Speaker.

House of Representatives, Melbourne. 25th June, .1901.

In Committee : -

Motions (by Senator Drake) agreed to -

That clause 1, as amended by the House of Representatives, be agreed to.

That the words of recital, as amended by the House of Representatives, be agreed to.

That the title, as amended by the House of Representatives, be agreed to.

Bill reported without amendment ; report adopted.

Bill read a third time.

Ordered (on

motion by

Senator Drake)

- ; That a message be sent to the House of Representatives returning the Bill, and informing that ' House that the Senate has agreed to the Bill as amended by the House of Representatives, in accordance with the suggestions of the Senate, as modified by the House of Representatives.

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16:47:00

Senate adjourned at 4.47 p.m..