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1901-11-06

Senate.

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

PETITIONS

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Senator CHARLESTON presented a petition from nine electors of the State of South Australia and members of the Legislative Council thereof, praying that the Senate would reject the Matrimonial Causes Bill.

Petition received and read.

Senator CHARLESTON presented similar petitions from sixteen electors of South Australia and members of the House of Assembly, from six electors of South Australia and from two citizens of South Australia being members of the Society of Friends.

Petitions received.

PAPERS

Senator DRAKE laid upon the table

Minute by the Prime Minister to the Governor

General in reference to preferential duties of customs in Canada.

A despatch, dated 17th May, 1901, from the Secretary of State for the Colonies to the Governor-General, with enclosure.

Ordered to be printed.

ASSENT TO BILLS

Royal assent to the following Bills reported -

Service and Execution of Process Bill.

Supply Bill (No 4).

ELECTIONS AND QUALIFICATIONS COMMITTEE

Saunders v. Matheson.

The PRESIDENT

- Before Senator Glassey moves the contingent notice of motion which, I understand, he is about to do at the request of Senator Symon, I think I ought to state to the Senate that I have been considerably exercised in my mind as to whether Senator Downer, chairman of the committee, who is in charge of the order of the day, ought or ought not to have priority with his contingent notice of motion. But inasmuch as I am informed that he has no objection to the contingent notice given by Senator Symon being taken first, I am relieved of that difficulty, and therefore I call on Senator Glassey.

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Senator GLASSEY

- I move -

That the petition against the return of Senator Matheson be not further entertained.

I regret, as I am sure every honorable senator does, that Senator Symon is unable to be present to move this motion. I believe that I express his sentiment when I thank Senator Downer for the very courteous position which he has taken up. It is also due to Senator Downer to say that, throughout the proceedings of the Elections and Qualifications Committee, he was uniformly courteous and considerate to his fellow members. I am only doing my duty in putting on record this acknowledgment of his urbanity and courtesy in the chair. I desire to correct a misstatement which has been made in the press that members of the committee have taken strong political sides. I do not believe that any honorable senator has been actuated by political bias. I cannot be charged with political bias, inasmuch as the opinions of Senator Matheson and myself on some political questions are as wide asunder as are the poles. Having met him on several occasions, not only in the Senate, but in the old Federal Council, I know that he is a very strong free-trader, and, as I take the opposite side of the fiscal question, I cannot be charged with being biased in favour of him. In the inquiry, I took the course which my judgment and conscience dictated to me as correct. I consider that the majority of the committee have all along taken the correct view - namely, that the petitioner had been negligent in the presentation of the petition, and that, inasmuch as he had not complied with the conditions of the procedure which he adopted, he was out of court. Senator

Matheson ought therefore, in all fairness, to be allowed to take his seat in the Senate. This is a matter to which I gave some thought and consideration while I was a member of the committee, and some time ago I moved accordingly. Therefore, this is not a new proposal so far as I am concerned. I hope that the Senate will adopt the motion and that the sitting member will consequently be entitled to take his seat. When this question was before the Senate on the 24th July last, I regretted very much that I was notable to be present. I communicated with the Vice-president of the Executive Council with a view of having the subject postponed, if possible, until I was able to be present. Unfortunately, circumstances were such that the honorable senator could not comply with my wish. I thank the honorable senator who paired with me on that occasion, so that my vote was not really lost. The elections for senators in the State of Western Australia, as in some of the other States also, took place on the 29th March of this year. I presume that the elections in that State, as was the case in the other States, were conducted in accordance with the existing law of the State. Therefore, if any dereliction of duty occurred on the part of any candidate, or if he violated any law, he must necessarily have violated the law of his own State. I am not aware that there is any other law under which the elections could have been held. Senator Matheson was elected at that particular time. I understand that some time elapsed before the actual declaration of the poll was made, but that does not alter the fact that he was duly elected on the 29th March. If Senator Matheson violated any provision of the law of Western Australia, surely there was sufficient time for the petitioner and his friends to take any action which they deemed advisable, and to lodge a petition in due form and in due time in accordance with the practice which was ultimately adopted by them. It is alleged in the petitioner's behalf that Senator Matheson was guilty of bribery and illegal practices, that he used undue influence in promising certain persons sums of money for supporting his candidature, and that he or his agent gave to Mr. Croft, the Secretary of the Political Labour Party and the Trades and Labour Council of Western Australia the sum of £50. These are the charges which are alleged against the sitting member. If they were proved, then undoubtedly Senator Matheson would have some difficulty in retaining his seat. Indeed, speaking as a person who has had considerable experience in political matters, and in the conduct of elections, I say that if these charges were proved or could be proved, the sitting member, would not be entitled to retain his seat. Petitioner Saunders, after a long delay, which is inexcusable, took action under the law and practice of Western Australia. He did so of his own free will. I presume that he was advised by his legal advisers to take that course. At any rate, he voluntarily elected to proceed under the Western Australian law and practice. Therefore, it was most natural that, inasmuch as he was advised to adopt that procedure, he should of course and of necessity have complied with the provisions of the Western Australian Act. "Under that law, a certain course has to be taken, and certain rules must be adhered to, before a petition can be heard. The question arises - did the petitioner comply with those rules and provisions under which he and his legal advisers choose to proceed? I contend that he did not. Some honorable senators have contended that he did all that he was capable of doing. I contest that statement. That is the view I have taken all along, and my position is strengthened by the evidence given by the Clerk of this

Senate in accordance with the resolution passed by the Senate on the 25th July last. When this matter was before the Senate on the previous occasion, it was said that the petitioner had done all he could to get a hearing. Let us see how far that is the case. Sections 146 of the Western Australian Act lays down certain rules to be followed. Those are the provisions under which the petitioner elected to proceed - I presume in accordance with the advice he received from his legal advisers. Those rules lay it down, first, that there shall be a petition, and, secondly, that the petition shall be addressed to the House affected, and presented by a member or left with the Clerk within 40 days after the return. Further, it is laid down that the petition shall be signed and attested, and, fourthly, that it shall be accompanied by a deposit of £50. It has been alleged that petitioner Saunders complied with every one of those conditions, and that that is all he had to do and could do. How very innocent the petitioner was! So the allegations made in his favor would lead us to believe. But I do not agree that the petitioner was so innocent; and certainly I do not believe that his advisers were either innocent or ignorant regarding the law. There was no innocence in their conduct in the petitioner's case, but an exceeding lack of activity and vigilance. For that lack the petitioner was entitled to pay the penalty, and not the sitting member. Of course the petitioner and his advisers had before them all the rules with which they had to comply. It has been contended that so soon as the petitioner left the petition with the Clerk he had done his duty. That is the whole point. I

think Senator Sargood went so far as to say on the last occasion that it was 'not the duty of the Elections and Qualifications Committee to enquire whether all the rules of procedure had been complied with, but to go on with the case. Nothing in the instructions given by the Senate could be taken to have that effect. The Senate gave certain instructions to the committee, who very justly and properly found that, inasmuch as the rules adopted by the petitioner had not been complied with, the petition should not be further considered. In deference to the resolution passed by the Senate on the 25th July-, the committee made further investigations, and exercised, so far as they were capable of exercising, all the care they could in endeavouring to obtain evidence, with the view of presenting their report to the Senate. They examined the Clerk of this Senate as to whether the petitioner had complied with all the rules with which he was bound to comply, and whether he was the innocent person some honorable senators would have us believe. I will take the liberty of reading the evidence tendered by the Clerk as to whether the petitioner and his friends actually were in a state of innocence, and whether they knew what action had to be taken, not only with regard to the lodging of the petition and having it signed and attested, and with regard to the deposit of £50, but also with regard to the time when the petition should be presented, and as to its presentation by a senator. The petition was presented to the Clerk, and, in so presenting it, the petitioner and his advisers were perfectly cognisant of what had to be done, in addition to the fulfilment of the conditions to which I have referred. The Senate met on the 9th May, but the petition was not presented to the Clerk until the 23rd May. The majority of the committee, after hearing the evidence of the Clerk, presented their report, together with the reasons for the position taken up by them. By so doing, they vindicated this Senate and the Clerk against any implicit charge of negligence on their part. It cannot be contended that the Clerk was to blame or that the Senate was to blame. The only person to be blamed, and the person who should suffer, is the petitioner himself. Surely it is wrong and manifestly unjust that the sitting member should be harassed, and put to enormous expense in view of the fact that the neglect to which I have referred rests entirely with the petitioner. In Parliamentary practice nothing is more strongly insisted upon than rigid adherence to the conditions as to time in the lodging of a petition. No blame attaches to the sitting member, and he ought to be held innocent until he is proved guilty. From my own experience in connexion with election petitions - which goes back as far as 1880, when in the town of Lichfield, I had something to do with the unseating of a member - as well as from reports I have read of proceedings on petitions in the English courts the utmost vigilance is insisted upon on the part of a petitioner. If any concession is to be made it should be given to the sitting member, and particularly to the State which has suffered the loss of one representative in the Senate for months past. The Senate met on the 9th May. The petitioner was here on the 8th of May, but he did nothing for a fortnight. The petition was not even signed until 23rd May, 35 days after the return of the sitting member, and on the verge of the 40 days' limit. On 23rd May, it was taken to the Clerk of the Parliaments, Mr. Blackmore, who never regarded the lodging of it with him as equivalent to its presentation to the Senate. Nor did the petitioner regard it in that way. Mr. Blackmore was examined before the committee on the 15th August, and gave evidence as follows : -

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Senator Sir J H Symon

- You have the original petition against the return of Senator Matheson ? - Yes.

Do you see the indorsements on the printed petition ? - I am satisfied that the indorsements are correct.

When was the petition left with you ? - On the 23rd of May of the present year.

Who left it with you ? - It was brought in by two gentlemen who, at the time, were unknown to me. I believe they were Mr. Saunders and Mr. Ward.

You mean Mr. Saunders, the petitioner ? - I believe he was one of them.

Some statements were made, and some discussion took place in the Senate during the recent debate on this subject, as to what took place between yourself and these two gentlemen when the petition was left with you. Will you kindly tell the committee what did take place ? - Two gentlemen entered the room which I was then occupying, and came to the desk where I was writing, and said - " We have a petition to lodge with you." I said - "Certainly." It is a common thing for honorable members to leave petitions with me, so that I may hand them to them in the Senate when they are wanted. They said - "This is a petition referring to a disputed return which will be challenged," and they referred me to a section of the Constitution, and said that it had to be presented under conditions prescribed by the law in Western Australia, the

Commonwealth not having yet provided the modus operandi. As it happened, my attention had never been drawn to the law of Western Australia, and I did not know it ; but they were good enough to produce the Electoral Act, and show me the sections governing the procedure in regard to presenting a petition against the return of a member. Then they opened the petition, and showed me that they had complied with the provisions of the sections of the Western Australian Act. Then they went on to say - " You will observe by this Act that we have to lodge £50 with you as a deposit." I said - " Very well, I shall receive that, and indorse on the petition that you have lodged it as security for costs. I shall give you a separate receipt, which you can take, so that you may have an extra guarantee." Then we got into conversation, and they began to talk about further procedure. I said at once then - "As an officer of Parliament, I cannot give you any advice or take any action myself in a matter referring to the unseating of a member, but I may tell you what is the common law of Parliaments with regard to all petitions, and that is, that they should be presented by a member of the House, to whom the petition is addressed." I particularly guarded myself against referring to any class of petitions ; I said - "All petitions." Then, of course, as is natural, there was a little more conversation. I said - " Mind, whatever I say to you is non official. Being an officer of Parliament, I cannot interfere in this matter." But as we got on in conversation, I simply made this remark - "By the way, I might point out to you that there is some difference of opinion as to whether the Constitution Act refers to the mere technique or modus operandi of getting a member returned, or whether it goes further, and applies to matters after the return. My own opinion is that it does not." To the best of my recollection, and I think I am right, that is the extent of what passed between us.

Was anything said about a member ? - I beg pardon, I am glad to be reminded. When I mentioned about the common law being for a member to present the petition, they said, to the best of my recollection - " Oh, yes, we have thought of that, and we have a member in our eye." Then they asked - " Would there be any difficulty in getting the petition from you ?" I said , "No, I shall lock it up, and I shall take it down to the chamber every day, and put it in my drawer of the table, and as soon as a member comes up to me and says that he has undertaken to present it, I shall hand it to him." I said - " Until some one comes up to me for the petition, it will go back to my office each day." That is the extent of what passed between us.

Mr. Fink(counsel for petitioner) Was that an unofficial conversation? I do not know.

You were speaking unofficially ? - With regard to taking the petition down, you may take that as official or unofficial as you like. It was simply saying what I should do.

By

Senator Walker.- You told them unofficially that there was a difference of opinion ? That was a sort of conversation.

I then examined the Clerk as follows : -

You told the gentlemen who waited upon you that you would take the petition and keep it in your drawer from day to day until such time as some member would call upon you for it? - Yes.

Did you do that?- Yes.

How long did you have the petition before any member called upon you for it? - I could not tell you exactly the number of days, but some two or three days - at least three days I think - before it was presented.

Speaking from memory, the Vice-President of the Executive Council, through his secretary, asked me if I would allow him to see the petition, and, of course, I did ; and they had the petition in their custody until it was presented.

That was about three days' after you received it ? - No ; I should say not more than three days before it was presented. It did not return to me until it was presented.

The Vice-President of the Executive Council, through his secretary, got the petition from you, and, I presume, he held it for several days ? - I would not say how many days. I doubt if it was more than three days.

The witness was then examined as follows : -

By

Senator Sir J.

. H. Symon.-Had you any conversation with any one else about the petition ? -No, except that from time to time, as we were crossing the passage, Senator Matheson asked me if it was going to be presented, and I said - " I have heard nothing more." He never came to my room to ask the question.

By

Senator Walker.- I think you said that you told them unofficially that there was a difference of opinion ? - That is a different matter. When they came in they naturally got into conversation. It was an ordinary conversation ; it was not official. We discussed the whole thing, and I said - " I may tell you that there is a difference of opinion as to whether that section of the Constitution applies to matters after a member is elected."

I think that evidence proves clearly that both the petitioner and his legal advisers had full knowledge of the fact that it was necessary for an honorable senator to present the petition to the Senate in due time and that form, and the Clerk was merely to be the custodian of the petition for the time being. That condition the petitioner did not comply with, and it remained for the Vice-President of the Executive Council to obtain the petition from the Clerk and present it to the Senate. He presented it on the 27th of June, whereas it should have been presented to the Senate on the 28th of May, therefore it was nearly a whole month too late. If ever there was neglect on the part of any person having dealings of this kind it was shown by the petitioner in this case. In view of the evidence, which has been given clearly, distinctly, and concisely, showing that the petitioner and his advisers had full knowledge of the conditions it is now too late in the day to try and persuade honorable senators that the petitioner believed he had performed his duty and complied with the rules of the Western Australian Act when he handed the petition to the clerk. He and his friends deliberately adopted the Western Australian Act, and so far as they knew there was no other law by which they were to be guided. They fulfilled some of the obligations of that measure, but did not comply with the condition that the petition should be presented by an honorable senator within a certain time. I cannot swerve from my position in the slightest degree that the petitioner's neglect is unpardonable, and that the penalty of his neglect should be that the petition should not be entertained. The honorable senator petitioned against should be entitled to take his seat. Senator Matheson even asked the Clerk whether the petition was going to be presented. The Clerk was unable to tell him, but the petitioner was here all the time from the 8th of May. What was he doing? "What were his legal advisers doing ?

Senator Sir John Downer

- The honorable senator knows more about the petition than others do.

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Senator GLASSEY

- I know from Senator De Largie, who travelled on the same ship as the petitioner, that he came over on the 8th of May. With regard to the merits of the petition I know absolutely nothing, and I care nothing ; but with regard to the seat of the sitting member I care a great deal. I care not upon what side in politics an honorable senator may be against whom a petition has been presented, but I care a great deal about having justice done. It was not my business to inquire into the merits until the preliminary necessary proceedings had been complied with. They were not complied with, and I know of no court in the world in which one can secure the hearing of a case except upon complying with certain conditions. It was the 27th of June before Senator O'Connor presented the petition, and it was then received for the first time by the Senate. It has been contended that the Senate is the court, but if so the petition should have been before the Senate in due time. If it was impossible for the petitioner to comply with that condition he should have moved the Senate in the matter. He should have explained that it was impossible to comply with that condition, and he should then have asked :for further time. There was no effort or attempt to do that. The petition was not presented to the Senate in time, nor was any extension of time asked for. I think I said in the earlier part of my remarks that it was contended, on the 24th of July, that the Senate instructed the committee to inquire into the merits of the case, and report upon them to the Senate. When were those instructions given, and by whom ? I believe that that was the contention set up by Senator Sargood, but I deny that any such instructions were given. I want to know where those instructions are. If the Senate has given instructions, I shall be very pleased to see ' them. Certainly the Senate appointed a committee to make an inquiry and report, but upon what 1Senator Sargood says, upon the merits of the case, but I deny that. I say that it was with regard to the preliminaries being taken into consideration prior to the merits of the case being inquired into by the committee, whether the court was the Senate or the committee. It was to consider whether the rules voluntarily adopted by the petitioner and his legal advisers had been complied with or not. If the Senate were the court, the Senate would be very guarded indeed in entering upon the consideration of the merits of the case, without inquiring whether the

necessary preliminaries had been complied with prior to the hearing of the case being granted. So far as I am concerned the contention positively falls to the ground, inasmuch as I am not aware of any definite instructions having been given by the Senate. When this question was before the Senate very great compassion was bestowed upon the petitioner, inasmuch as he was an innocent man and had done all he could do. The Vice-President of the Executive Council was exceedingly strong on that point. He told us that no person could gainsay that it was an utter impossibility for the petitioner to do anything else than what he did. I do not agree with that statement at all. I should be very slow indeed to question the authority of Senator O'Connor on legal matters, but I say that this petitioner did not do all that he should have done. He complied with certain of the rules ; why did he not comply with them all 1 Who is to blame for his want of compliance 1 It certainly could not be his legal adviser ; otherwise that gentleman could not have given the question the consideration which he should have given it. I should be very slow to believe that the petitioner or his legal, adviser were without knowledge that a further condition had to be complied with, It was not complied . with. I think the sitting member is entitled to all the consideration and compassion, and not the petitioner. I have no prejudice in the matter, but I have a great desire for fair play and justice. Whether the person whose seat is petitioned against is a political opponent of mine or not, .as a member of this Senate, he shall have the fullest consideration and compassion from me, and I shall consider also the State which he has the honour of representing, rather than a petitioner who is absolutely at fault and guilty, according to the showing of the Clerk, as is demonstrated beyond question and beyond doubt, of the grossest negligence. I say that this element of innocence, so much talked of, and the statement that the petitioner had complied with every condition he was capable of complying with, greatly influenced the Senate in dealing with the question in July last. If my advice had been taken before the report was presented on the 11th of July, and the committee had presented, not merely a bald report, but giving reasons in detail to guide the Senate, I am vain enough to think that a different conclusion would have been come to. Unfortunately a bald statement, exceedingly concise, but without any explanation as to what led the committee to adopt the report, was presented, and in consequence of the lack of detailed information which, I think, should have been supplied, the Senate acted hastily, and, I think, in a way contrary altogether to that in which it would otherwise have acted.

The PRESIDENT

- The honorable senator must not reflect upon a vote of the Senate.

Senator GLASSEY

- There is another element which I think should not be overlooked. There is the contention that the Senate is the court, and that there should be no limit to the time within which a petition may be presented. If that contention holds good, what is the position of honorable senators ? A petition may be lodged against any honorable senator to-day, to-morrow, next year, or at any time during the term for which he has been elected. Are honorable senators prepared to take up that position, and contend that there should be no time limit for the presentation of a petition. I, for one, decline to do so. I know of no law which one may violate, and with respect to which there is no rule laid down, fixing a limit of time within which a prosecution for such violation shall take place. I am sure honorable senators will see that to adhere to the doctrine that there shall be no time limit in the case of the presentation of the petition against a member of the Senate would be most dangerous.

Senator Sir Frederick Sargood

- It is so at the present.

Senator GLASSEY

- Well, the sooner the insecurity is removed, and a time limit stipulated, the better. If I have violated a law of my State, under that law I am liable to be prosecuted. The Commonwealth has as yet no special law, and I must of necessity be tried in accordance with the rules and practice existing in the State whose laws I have violated. If honorable senators are prepared to adhere to the doctrine that a petition may be lodged against any one of us to-morrow, our seats may be challenged -r we may be obliged to incur expense which few of us may be prepared to meet, and no end of inconvenience, injustice and wrong may be done, not only to the sitting member but to the State he has the honour to represent. I shall be no party to subscribing to> such a doctrine, and I, at any rate, dispute the contention of Senator Sargood on this point.

Senator Sir Frederick Sargood

- The new standing orders provide for it.

Senator GLASSEY

- So much the better. I think it is common sense if, it be nothing more, that there should be sometime limit fixed. I do not know that I have anything further to say upon this, matter. I hope the question will be debated, free from personalities and technicalities, with good taste, and in good temper. I trust sincerely that inasmuch as the petitioner and his friends voluntarily adopted certain rules of procedure, because they knew of no other, and, inasmuch as they have not fully complied with them,, whatever compassion is to be extended by the Senate shall be reserved, not for the* petitioner and his friends, but for the sitting member and the State he has the honour to represent. I hope that the Senate¹ will this afternoon deal with the matter once and for all, and that if a penalty has to be<gt; paid it should not have to be borne by the: sitting member, and indirectly by the State: of Western Australia, but by the petitioner who showed gross negligence and a lack of that vigilance, attention and care, which he and his legal advisers must of necessity have: known were required when the petition, was presented.

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Senator Sir JOHN DOWNER

- I was very glad to hear from the speech made by Senator Glassey that he recognised at all events the fairly judicial position I endeavoured to assume throughout this inquiry, although I may tell the- Senate that I had great temptation at times to be a little in judicial. It appeared to me, to use the words of my friend, to be a matter which did not require any temper or any feeling of compassion; but simply and solely a sense of justice, and that is the point of view from which I propose to deal with it. This is not a question of compassion for the sitting member, or for the petitioner, or of mercy here or there, but we have to see that we do not begin our record with a refusal to inquire into that which needs inquiry, and with a determination to resist justice at any price. I know no more about the merits of this case than a man in the moon. But the principle of it seems to me to be in a nutshell. "We are sitting under a new Act of Parliament, which provides that a question relating to a disputed election shall be determined by the House concerned, and that the conduct of the election shall follow the law relating to the Lower House in the State where the election took place. The elections for the Senate, as the elections for the House of Representatives, had to take place according to the law of Western Australia. Whether the return was disputable depended on the law of that State, but the tribunal to decide the question was not a tribunal appointed by the law of Western Australia, but the Senate itself. There you have the whole thing in two or three words, absolutely and utterly beyond question. We had no rules, and immediately we met came a petition relating to a disputed election. The petitioner did not know what law to go under, or what procedure to follow. The Clerk said to the petitioner - "The common law of Parliament is that a petitioner has to get a member to present the petition, but I do not know how it is governed by this Constitution. It seems to me that the election had to take place under the law of the State, but when it goes beyond that point I do not think that law does apply." I am pleased to know that the Clerk's views and my own agree on that point. The question we have to try is whether this is a bona fide petition or not. If it is not bona fide, away with it. But, if it is bona fide, has there been gross negligence? On the 23rd May the petition was left with the Clerk ; on the 6th June notice was given for the appointment of a committee of disputed returns; on the 12th June that committee was appointed, but by the standing orders it was inoperative until about the 23rd June. On the 27th June the Vice-President of the Executive Council moved that the petition be referred to it.

The petitioner showed his bona fides in doing everything he could do.

Senator Playford

- Except get the petition presented.

Senator Sir JOHN DOWNER

- The Clerk did not know whether that was the proper way for the petitioner to proceed. May I be allowed to say that the course followed was in accordance with the usage not merely of Western Australia but of Victoria. We talk of negligence. There is no fixed statutory duty, as Senator Glassey said, for a petitioner to present his petition within a certain time. If there is a fixed statutory duty, it comes under the law of Western Australia, and that has been complied with. The law of Western Australia requires the petition to be left with the Clerk, and the House to send it on. The law in Victoria is the same, and gentlemen in both Houses in this State have told me that they know of no case in which there has been a motion to refer a

petition about a disputed return, but that it has been left with the Clerk as a matter of course, and sent on by the Speaker without a motion from any honorable member. I do not say that that is conclusive in the slightest degree, but we have no fixed time, and it is only a question of whether the man was diligent or negligent? If there is a fixed law it will be the Western Australian law, and the petitioner complied with it.

Senator Clemons

- We say he did not.

Senator Sir JOHN DOWNER

- But the Senate ruled that he did, the other night.

Senator Clemons. - It never did.

Senator Macfarlane

- That it did not apply.

Senator Sir JOHN DOWNER

- The Senate ruled that there was no law to prevent the petitioner from being heard.

Senator Clemons

- According to the honorable and learned senator the Senate ruled that the law did not apply, and the petitioner complied with the law.

Senator Sir JOHN DOWNER

-The Senate ruled that there was no law to prevent our going on with the inquiry. What undoubtedly was the original position was that the law of Western Australia did apply, that the petition was presented within forty days, and that therefore the law was complied with, but that it had not been sent on. within ten days.

Senator Clemons

- No.

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Senator Sir JOHN DOWNER

- That was the question at issue between the minority and the majority of the committee on the first occasion. Now, approaching this matter with a desire to do even-handed justice, I ask where was the negligence ? The petitioner left the petition with the Clerk on the 23rd May. No one complains that it was not left in time. Where is his negligence after that? He left the petition with the Clerk, and that, according to the law of Western Australia and Victoria, is the proper course, and it is the only course in other places, which have statutory courts, and complete methods of procedure by which the thing works itself out without any motion. Therefore, there would seem to be no negligence. But it is said that there was negligence because the petitioner spoke to the Clerk of the Senate, who said that he did not know what the law of the Constitution was, but that under the law of Parliaments some one ought to present the petition. That, however, was not the law of Western Australia, or of Victoria. What had been going on ? On the 23rd May the petition was presented to the Clerk. On the 6th of June, notice of motion was given for the appointment of the committee. On the 12th June, the committee was appointed. On the 23rd June, the committee became operative and could proceed with business. On the 27th June, the petition was presented to the Senate. During the whole interval from the 23rd May to 27th June, between the time when the petition was lodged, and when it was referred to the committee, the petition lay with the Clerk.

Senator Clemons

- Is the honorable and learned senator's point that as there was no committee there could be no presentation ?

Senator Sir JOHN DOWNER

-It could have been presented to the Senate.

Senator Clemons

- Of course it could; the appointment of the committee has nothing to do with the presentation of the petition.

Senator Sir JOHN DOWNER

- Either there is an absolute rule, and if there is, it was not complied with ; or there is not an absolute rule, and then it is a question of negligence. Whether the petitioner assumed that he had to act under the law of his own State of Western Australia, or under the law of the State in which the Senate was meeting, Victoria, the lodging the petition with the Clerk was equivalent to its presentation to the Senate, and the rest was a matter of course, a perfunctory act.

If the petition had been presented by 20th June, what could the Senate have done more than it actually did 1 The view I have taken about this matter throughout, knowing nothing about the merits, and anxious to be relieved from one of the most painful positions I have ever been in in the course of my life - a position in which I have endeavoured to do justice, but have obtained great offence and great indignity - is what I have explained. No one could be more happy to be relieved of the position I occupy than myself ; but, at the same" time, if this Senate wishes it to go forth that we are not a mere political body, allowing party considerations to tread upon the sanctity of justice, we should continue this inquiry. "Whether it be continued by the present committee or some other body I care not. I shall be glad to be out of it. At the present time I look upon the subject simply as a person knowing nothing of the merits of the case, but as a fair-minded man of the world accustomed to studying cases, with a desire to arrive at reasonable conclusions. From that point of view, I say that nothing on the part of the petitioner would justify this Senate in denying to bini the right to an inquiry, and to the justice which he demands.

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Senator PLAYFORD

- I think that if this Senate has anything to deplore since we first met in this Chamber, it has been the illness of Senator Fraser. If he had not been ill we should undoubtedly have had at the present moment a majority report from the Elections and Qualifications Committee, as it was at first appointed to inquire into this petition. That majority report would have met with the approval of the majority of the Senate. But Senator Fraser's resignation from the committee resulted in a dead-lock, and led to the difficulty with which we are now faced. On the last occasion when this question was before the Senate - leaving out the time when we had to decide whether the chairman of a committee had a deliberative as well as a casting vote - I contended that there was no evidence to prove that the petitioner had not done all that he could possibly have done under the circumstances. It was my belief at the time that the petitioner really thought that when he presented his petition to the Clerk of the Parliaments, Mr. Blackmore, he was doing all that he ought to have done under the law of Western Australia. Being under that belief, I thought we had no right to take advantage of the ignorance of any individual on a matter of this kind, particularly as it was the first time any petition had been presented to the Senate on a matter relating to a disputed return. As there was no law on the subject, I thought that we had no right to take advantage of a mistake that an individual might easily fall into. Therefore I voted with the majority, in favour of referring the matter back to the committee for the purpose of making still further inquiries. The committee have taken no evidence on the merits of the petition, but they have, I understand, heard the lawyers on each side. "We have before us no report as to what was said hy these learned gentlemen. But we have before us the evidence given by Mr. Blackmore, our Clerk, and that evidence shows that the advisers of the petitioner are not such wonderfully ignorant persons as might have been supposed. I entirely disagree with the statement of Senator Downer when he says that there is no fixed law on the subject, and that if there is a fixed law the petitioner complied with it. I contend that, so far as the Commonwealth is concerned, there is no law on the subject, but it was certainly understood that the elections of senators were to be conducted under the laws of the States concerned. There is no doubt in my own mind that that was the intention of the framers of the Constitution. It is the commonsense position. Therefore, there was a law on the subject, and the petitioner's advisers knew it thoroughly. Yet in the most unaccountable manner they failed to comply with the conditions of that law. Take the evidence of Mr. Blackmore. The petitioner or his representatives came to that gentleman with their petition. Did they look upon the mere fact of lodging the petition with the Clerk as a compliance with the law of Western Australia ? Decidedly not. The)' said, " We have in our eye a senator who will present the petition." Is it to be supposed that, if they had their minds thoroughly made up as to the procedure they ought to adopt, and if such procedure had been in the direction of simply leaving the petition with the Clerk, they would have thought it necessary to do any more? Nothing of the sort. But they distinctly said, " We leave it with you " - to do what with it ? Was the Clerk to present it to the Senate? Decidedly not. Was he to hand it to you, Mr. President ? Decidedly not. He was to hold it in his hand for the purpose of safe custody, and give it up at the proper time to a senator who would present it to the Senate - the very procedure which the law of Western Australia prescribes. Therefore, the petitioner knew thoroughly well what he had to do, and it is not for us to inquire how it is that he neglected his duty. I suppose that there is scarcely a senator who would not have presented that petition if he had been asked. I should never refuse to present any petition if it were respectful, even though I disagreed

with what it asked for. There is never any difficulty in obtaining a senator to present a petition. But the petitioner's advisers waited day after day, although they knew exactly what procedure had to be taken. They absolutely neglected the petition and the procedure. So far as the deposit is concerned, they had paid the money. They had complied with the whole of the law of Western Australia, except in regard to the presentation of the petition, which they had prepared in proper form, and had ready for presentation. It was not left with the Clerk as a compliance with the law of Western Australia. Therefore, the petitioner did not comply with the law of Western Australia, and Senator Downer's contention, that if there is a fixed law governing the case they complied with it, is a mistaken one. There is a fixed law, but they did not comply with it, and as they neglected to do so, they must suffer the consequences.

Senator O'Connor

- What, in the honorable senator's view, is the fixed law 1

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Senator PLAYFORD

- The law of Western Australia, whatever that may be. That has been shown to be the case in regard to a petition presented to the House of Representatives against the return of Mr. E. Solomon. But in the present case the petitioner did not comply with the law, and under the circumstances I think that the best course the Senate can adopt is to pass the motion moved by Senator Glassey. ' If I thought that this petitioner was ignorant in what he had done, and made a mistake through his ignorance, I should take a different course, because I believe that we should not. judge matters of this sort in accordance with the strict letter of the law, but should consider the equities of the case. But here we have a man deliberately coming to the Clerk of this House, knowing what to do, and doing it up to a certain point, and then neglecting to attend to a certain matter. Therefore I shall vote for the motion.

"Vice-President of the Executive Council

Senator O'CONNOR

. - I sincerely hope that the Senate will not be led into taking the course involved in Senator Glassey's motion. To do so would be, in the first place, to absolutely stultify the Senate itself, and, in the second place, to deny justice to the petitioner, on grounds which are in themselves not only untenable, but, it appears to me, absolutely farcical. I cannot understand how any honorable senator who remembers that we are dealing with the question of the rights of the petitioner, as well as the rights of the sitting member, could come to the conclusion that, on the flimsy grounds which have been put forward by one section of the committee, and by the mover of this motion, we should deprive any one of the slightest right which any man might claim, much more than that we should deprive him of the right of sitting in this Senate. A great deal of time has been expended already upon this matter. I do not wish to devote any more time to it than is absolutely necessary, but I feel that the credit of the Senate is involved in the course which is to be taken now, and, therefore, I think it necessary to state, in a very few words, the position in which the matter now stands. The Senate referred this petition, on 27th June last, to the Elections and Qualifications Committee. The committee was appointed for the express purpose of dealing with this question, because, although it is a standing committee, open to consider any other petition, there was actually no other petition in existence when it was appointed, and it is unlikely that any other will come before it. The committee having been appointed as the tribunal to consider this question, the petition was referred to it on 27th June last. Since that time the matter has been before the committee, and now a member of it asks us to take action. In what circumstances ? It has been considering the matter from the 27th June until the 6th November, and has at last arrived at a position in which it is equally divided and cannot determine upon any conclusion. That is the report which it brings before us.

Senator Clemons

- And it has kept the sitting member out of the Senate all this, time.

Senator O'CONNOR

- I hope it will be understood that I am not attempting in any way to attach blame to any member of the committee. Every member of it has a right to his own opinions, and if, unfortunately, the committee is so divided that it cannot agree, there is no other course open to it than to come to the Senate itself which has delegated its power to it, and to inform it of the condition of affairs which prevails. But whatever the reason may be, the committee, being absolutely unable to agree,, has brought up a report to the Senate which deputed it to inquire into the matter. In that report the members say practically - " We are equally

divided ; we can come to no conclusion." That being the case, Senator Symon gave notice of the motion, which has been moved by Senator Glassey, to the effect that the petition be no longer entertained. That is to say, that is the view of one section of the committee. But on what grounds ? On the grounds that the law of Western Australia has not been complied with, and that -

There has been unexplained delay and want of diligence on the part of the petitioner in such presentation and prosecution prejudicial to the sitting member and his State.

Those two grounds are absolutely the same. They both depend entirely upon the question of whether the law of Western Australia, applies. The question was thoroughly thrashed out in the Senate on the occasion of the first report. The committee, having considered the matter from the 27th of June until the 11th of July, brought up a report on the latter date, in which they said that -

The petitioner has not conformed with the electoral law of the State of Western Australia ; and your committee recommend, therefore, that the petition be not entertained.

The Senate listened for hours to everything that was to be said upon the question. In addition to that, most of the evidence given subsequently by the Clerk was before the Senate, although only as hearsay and rumour. Having heard all these matters the Senate came to the conclusion that the law of Western Australia did not apply.

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Senator Clemons

- It did not hear the Clerk's evidence on that occasion. No evidence of that sort was heard before.

Senator O'CONNOR

- What I said was that the matter subsequently given in evidence by the Clerk was substantially before the Senate on that occasion as hearsay and rumour.

Senator Clemons

- The honorable and learned senator asks honorable senators to attach the same value to rumour as to evidence.

Senator O'CONNOR

- The Senate had to consider the grounds upon which it was said at that time that the law of Western Australia applied. It was admitted by Senator Symon that, apart from the action of the petitioner himself, the law of Western Australia did not apply. Of course that is the only conclusion that any reasonable person, much less any senator knowing anything of the law, could come to.

The PRESIDENT

- I wish to point out that strictly speaking, reference cannot be made to the former debate, but inasmuch as the matter now before the Senate is so much mixed up with it, and really a continuation of that debate, I feel justified in relaxing the rule.

Senator O'CONNOR

- Senator Symon, on that occasion, said this -

What the majority of the committee felt was that they, at any rate, could not sanction any evasion of the Act of Parliament.

I inquired, "Of what Act of Parliament?" and Senator Symon replied -

Of the Act of Parliament prescribing the practice which they had adopted.

In answer to my further inquiry, " What Act of Parliament 1 " Senator Symon said -

The Act of Parliament of Western Australia. As I have said so far as my own opinion is concerned, I hold that the Act and practice of Western Australia have no application whatever. The committee never said so for a moment. But there was no practice and no procedure. The Senate might have adopted- and I venture to think it was the duty of the Vice-President of the Executive Council when he moved in this matter to have formulated - sessional orders governing the limitation of time within which petitions should be presented, and the procedure that should have been adopted. That has been done in every instance with which I am acquainted

And so on. I quote from Hansard, page 2890. Therefore the honorable and learned senator admitted that the law of Western Australia did not apply. But the law of Western Australia has been dragged in to the detriment of the petitioner in a curious way. -It is said that it is quite true that the law of Western Australia does not apply ; that there is no procedure which does apply ; that no procedure has been laid down by the Senate which could have been followed, but, because the petitioner himself followed the law of

Western Australia.

Senator Fraser

- In part.

Senator O'CONNOR

- In part, therefore he is bound to follow it out altogether, notwithstanding that it does not apply. In other words, if the petitioner had chosen to follow no particular law, but had simply lodged his petition without any deposit, or in any way he thought fit, who could say that he had not complied with the law? But, because he took it upon himself to be more accurate, and to follow the law in certain particulars, then it is said he was bound to follow it in a way which was absolutely impossible.

Senator Fraser

- There may be still more petitions in that case.

Senator O'CONNOR

- I sincerely hope that no honorable senator is going to allow himself to be influenced in dealing with this matter by the consideration that he has been making his seat safe by creating a precedent of this kind. I trust that the matter will be decided entirely upon the consideration of the rights and justice of the case. Of course it is true that the Senate might at any time lay down rules relating to the presentation of petitions. But these rules in effect would be standing orders which practically could not apply to a case of this kind, the petition having been presented before they were formulated. No rules could have been formulated before, because in the nature of things a court of this kind is created only after election, and it has no power to create standing orders until the Senate itself is elected. It could not make rules in regard to the presentation of petitions which would have a retrospective effect. It is, therefore, idle to say that petitioner was bound by rules which had no existence. It is because he adopted to a certain extent the law of Western Australia, but did not adopt it in full, that we are asked to say that he must be taken to have failed in his compliance with the conditions necessary to be observed before he can be heard on the facts.

Senator Fraser

- The House of Representatives adopted that view.

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Senator O'CONNOR

- Never mind the House of Representatives. The Senate has decided that the law of Western Australia does not apply.

Senator Clemons

- What?

Senator O'CONNOR

- The Senate has decided that there is no law which prevents the petition from being heard.

Senator Clemons

- No. It has not been decided that the law of Western Australia does not apply.

Senator O'CONNOR

- Then the honorable and learned senator contradicts a resolution passed by the Senate.

Senator De Largie

- No. The Senate neglected its duty.

The PRESIDENT

- Order. The honorable senator must not reflect on a vote of the Senate.

Senator O'CONNOR

- I will read the exact words of the resolution. The report I have referred to already was presented on the 11th July, setting forth that -

The petitioner has not conformed with the electoral law of the State of Western Australia; and your committee recommend, therefore, that the petition be not entertained.

The Senate then passed this resolution -

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

That is to say the committee having reported that the law of Western Australia prevented an inquiry because the petitioner had not complied with it, the Senate taking even a wider ground than that said,

"There is no law which prevents a petition being inquired into." If there is no law to prevent that, then the law of Western Australia does not prevent it. I hope that no honorable senator has so mean an opinion of the intelligence of the Senate as to advance the opinion that because the words "the law of Western Australia" were not used in that resolution, therefore the Senate expressed no opinion as to whether it applied or not. The sole ground for the report of the committee was that the law of Western Australia did not apply, and, therefore, that the petition could not be entertained. The Senate, however, sent back the petition with the intimation that there was no law - meaning the Western Australian or any other law - which prevented it from being entertained. The petition was considered, but the committee could not arrive at any conclusion. Now they report again with the sole difference in regard to the facts that in the meantime they have taken the evidence of the Clerk. I appeal to any honorable senator who looks at this matter in the same way as he would look at any case involving the decision of the smallest possible claim or right, to say whether there is anything in this evidence except in regard to the law of Western Australia. And if the law of Western Australia has no application, is there anything whatever which is relevant in this evidence given by the Clerk? What is the effect of it? The effect of it is simply this : This petition was lodged with the Clerk with a deposit. A conversation took place as to what the procedure was. I am not going into the details now, but the petitioner seemed to intimate that he was inclined to think that the petition might have to be presented by somebody. The Clerk stated what he believed to be the general parliamentary rule, but expressed no definite opinion about it, and he told the petitioner and his friend, very properly, that there was some doubt as to whether the Constitution applied the laws of the State after the election or not.

Senator Sirjohn Downer

- And he thought it did not.

Senator O'CONNOR

- And he said that in his opinion it did not. There was a conversation of that sort, and during the conversation one of the persons happened to mention that, if the petition had to be presented, they had some one in their eye who would be able to present it. What if they had? I say it does not matter. Is there anything in the whole of that evidence which affects in any single degree the right of this person to have his petition considered by the Senate ? There is no law, as the Senate has decided already, which prevents that being done.

Senator McGregor

- On what law is it to be decided ?

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Senator O'CONNOR

- The Clerk told the petitioner that in some cases these petitions were to be presented, but he was doubtful whether the law of Western Australia applied or did not. The whole matter was left in a state of doubt and uncertainty, and what is there in that which would deprive the petitioner of the right of having his petition considered if he had that right before ? If we say that the law of Western Australia is to be applied, that is a different matter, but it is admitted that the law of Western Australia cannot be applied unless upon the ridiculous assumption that because the petitioner has adopted it, we should therefore apply it against him. In what other way does it deprive him of the right which he has to have this petition decided by the Senate? Now, let me state as concisely as possible what, in my view, the right of the petitioner is. Under the Constitution, this Senate is the court by which these petitions are to be tried. From the very nature of things, no procedure could be laid down, or has been laid down, for the trial of these petitions. The Senate, therefore, is the court to try these petitions, unhampered by any procedure of any kind whatever.

Senator McGregor

- Under what law ?

Senator O'CONNOR

- I have said already, under the Constitution. That is the only law.

Senator McGregor

- And the Constitution does not provide?

Senator O'CONNOR

- And the Constitution could not provide.

Senator Fraser

- The Government should have dealt with the matter.

Senator O'CONNOR

- That does not get rid of the difficulty. The honorable senator says that the Government should have dealt with the matter. That is a very easy way of getting rid of anything, but I ask the honorable senator how was that possible.

Senator Fraser

- By passing a short Act.

Senator O'CONNOR

- Will the honorable senator tell me what the provisions of the short Act should have been, or how any Act could have such a retrospective effect as to deprive, after a petition had been presented, any man of his right under the petition ? With all respect to the honorable senator, if that is the ground upon which he comes to this conclusion, I think he will see upon reflection that he is wrong. The Constitution has provided no general law for the trial of these claims, and it must therefore leave the procedure to the Senate itself. At the time the petition was presented, Parliament could not possibly have provided any procedure, and whether Parliament ought to have provided procedure or not, no procedure was in existence. Under these circumstances, what was the right of a person presenting a petition to the Senate? Surely, if he brought his case before the Senate in the way in which such matters are ordinarily brought before such tribunals, he did sufficient so far as he was concerned ? He did that on the 23rd May by presenting the petition. It is then in the hands of an officer of the House. Then what has he to do ? In Victoria, as Senator Downer has said, the practice is to lodge the petition with the Clerk. In New South Wales the petition is lodged either with the Governor - that is, the Executive Government - or with the Speaker, to be presented by them to the House. According to the law of Western Australia, it is lodged with the Clerk. How could any one suppose that in regard to this petition to the Senate, which had no procedure laid down, a procedure unknown to any other Legislature should suddenly be adopted for the purpose of preventing an inquiry being made? Unless the Senate is prepared to adopt that view, I can see no reason whatever why the evidence which has been given by the Clerk should make any difference in the conclusion which the Senate arrived at upon the other occasion. Of course, I admit at once that, the Senate being the sole judge of procedure, it would have the right to say - " Well, this petitioner has taken a very long time ; he has taken months to formulate his claim. On the face of it we can see from that that he has been guilty of such negligence that we ought not to entertain his petition." The Senate, under these circumstances, would be perfectly justified in laying down its own rules, and in saying that under these circumstances it would not listen to the petitioner. I take it that if a petition was presented, say, so late for instance as at the present time, the Senate would be perfectly justified in coming to such a conclusion. But is that the case here ? Is there here any element of neglect whatever ? On the contrary, did not this petitioner follow exactly and in every particular, so far as he could follow it, every known procedure in bringing his petition before the Senate ? I have spoken of the matter entirely upon the rights of the petitioner and of the sitting member. Something was said here about the innocence or want of innocence on the part of the petitioner.

Senator Glassey

- That was alleged.

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Senator O'CONNOR

- I do not know who alleged it. I know that with regard to the majority of honorable senators it was no ground whatever for the decision arrived at.. Whatever his innocence or knowledge was, it did not affect his rights in any way. I say now that we should decide this question entirely apart from any knowledge or want of knowledge on the part of the petitioner. It is not a personal matter at all, and not a question of mercy or commiseration in any way. It is a question of what the petitioner's rights are, and if he has the right to be heard, he ought to be heard. If he has not that right, the action should be taken which Senator Glassey suggests. Those should be the only considerations. I have referred to the evidence for the purpose of showing that it makes no difference whatever in the facts that were before the Senate when we came to a conclusion on the last occasion. The Senate having come to the conclusion that this petition should be entertained, and that there was nothing in the law to prevent its being entertained, it is

now asked to retrace its steps, and to refuse to hear the petitioner. Why 1 On precisely the same grounds - no other substantial ground - that were before the Senate on the last occasion. I say that it is trifling with the Senate, and trifling with its position as a deliberative body, that a committee, which has been instructed to do a certain thing, and which has certain principles laid down for its direction, should send a portion of its members here to ask for a further decision, to ask for a reversal of the former decision of the Senate, and that this petition should no longer be entertained. The additional ground they have given - that there has been an unexplained delay and want of diligence on the part of the petitioner, which has been prejudicial to the sitting member - is absolutely without any foundation. In the first place, it is said that the law of Western Australia has not been complied with. Although the sections were referred to in the last debate, I should like to tell honorable senators substantially what the law is that has not been complied with. In the first place, the petition is to be presented by a member or left with the Clerk within 40 days after the return. That has been done. It is to be signed by the candidate or by a person qualified to vote at the election, and certain formalities with regard to witnesses are to be followed. That has been done. A deposit of £50 has to be lodged. That has been done. All these conditions have been complied with. Then it is said that the next condition, section 147, has not been complied with.

All petitions shall within ten days after the same have been received be referred to the court.

Be referred by whom ? Be referred by the House - that is to say, this being the law of Western Australia, the House of Western Australia has to do this. But it has no application to the Senate, and if it had an application to the Senate, how could this petitioner in any way secure the reference of his petition," or how should he be to blame if the petition was not referred ? And would it not be the grossest injustice to shut out the right of petition here, and refuse to hear this petition because the Senate having the petition before it did not take some action in regard to referring it to some tribunal for inquiry 1

Senator Fraser

- The petitioner himself did not take it.

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Senator O'CONNOR

- It is the most grotesque injustice that could possibly be perpetrated to send away the petitioner from this Senate, and refuse to hear his petition on this technical ground, which has absolutely nothing whatever to recommend it, and which if followed would certainly be utterly unworthy of the position of the Senate, charged with the duty of inquiring into these petitions, and would be a discredit to everybody concerned, in avoiding the duty which the Constitution has placed upon it. As I said on the last occasion, I know nothing whatever as to the merits of this petition. It is a matter of exceeding regret to me, as it must be to every member of the Senate, that this question has dragged on for so long without being brought to a conclusion. I think the way in which we solve this difficulty now is a matter for very serious consideration. On the one hand we are asked by Senator Glassey to solve it by voting directly in the face of what we have already decided, and by coming to a conclusion which has nothing whatever, either in law or in fact, to recommend it, and refusing to entertain this petition first because the petitioner has not complied with a law which has no application ; and secondly, because he has been guilty of neglect, when it is perfectly obvious that there is no neglect can be pointed to that he has been guilty of. That is one way out of the difficulty which is proposed, and which it is impossible for the Senate to follow in justice to itself, to the petitioner, or even to the sitting member. There is another way suggested by Senator Downer. I presume that as his motion is a contingent notice of motion relating to the same matter, I shall not be out of order in referring to it. Senator Downer suggests that the committee should go on. That is also impracticable, because it is quite evident that a dead-lock would occur. Both these courses being impossible, I intend to suggest a course which will do justice to both the petitioner and the sitting member, which may be followed with credit by the Senate, and which is the only practical way it can find out of the difficulty into which it has got through no fault of its own. The committee having had for months the consideration of the petition in hand has found that it is unable to agree about it, and it has come to the Senate for instructions. The only way out of the difficulty is - first, that the committee be discharged from further inquiry; secondly, that steps may be taken if necessary for rescinding in accordance with the standing orders the resolution appointing the committee ; and, thirdly, the appointment of a new committee to which the petition may be referred. I have spoken to the President, and he has permitted me to say that, if requested by the Senate, he will undertake the very responsible duty of appointing another committee.

Senator Glassey

- Are we to pass a vote of censure on the first committee?

Senator O'CONNOR

- It is not passing a vote of censure on the first committee, but if that is the only way in which the Senate can do right and justice to the petitioner and itself, why should it hesitate to follow that course? 1 The committee has brought up a report in which it has admitted that it is impossible that it can go on, and under these circumstances what right has any member of the committee to complain when the Senate says it shall be discharged from further action? The way out of the difficulty suggested by the committee is to take the view of one section of it in opposition to a resolution of the Senate. That cannot be done. Whether the committee take it as an adverse comment on their action, which is not intended--

Senator Glassey

- I certainly shall !

Senator O'CONNOR

- I am very sorry if the honorable senator takes that view, but I see no other course to follow. 20b

Senator Glassey

- Than get a partisan committee 1

Senator O'CONNOR

- Considering the circumstances in which we find ourselves, and considering the report of the committee in which it confesses its inability to do any thing more, it should not be surprised if the Senate comes to the conclusion that it be asked to hand over its functions to another committee which will be able to, arrive at a conclusion. I move -

That the question be amended by the omission of all the words after the word "That" with a view to insert in lieu thereof the following, words : - 1. The committee be discharged from further consideration of the petition. 2. Steps be taken if necessary for rescinding in accordance with the standing orders the resolution appointing the committee. 3. Action be taken in accordance with the standing orders for the appointment of a new Committee of Elections and Qualifications, to which the petition shall be referred.

Senator DE LARGIE

- I hope that the Senate will not carry the amendment, because it must be quite evident to every one that it will be utterly impossible to get an impartial committee after the case has been discussed so much as it has been. If another committee were to take up the work it would be in a worse plight than we are in and, goodness knows,, the committee has not been a happy family. The decision of the committee is practically a majority decision. If it had not been for the unfortunate circumstance which caused Senator Fraser to retire, the motion of Senator Glassey would have been practically the decision of a majority of the committee. Therefore, to appoint another committee would be unfair, not only to Senator Matheson but to the Senate as a whole and the present committee. I do not see how it would be possible, after every one has committed himself on one side of the question or the other, for the Senate to appoint a committee which would be impartial.

Senator O'Connor

- No one has expressed) himself on the facts at all ; we know nothing; about them.

Senator DE LARGIE

- Honorable senators have expressed themselves very freely all round.

Senator Sir John Downer

- I have not. I do not know anything about the facts.

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Senator DE LARGIE

- We have expressed ourselves very freely as to the procedure under the law which applies to the petition. The whole case hinges so much on the procedure that we could not possibly- get away from the remarks we have made in the Senate and the votes we have given. In the last debate on this question, there was some doubt as to whether the petitioner had received a fair deal in bringing the petition before the Senate. There seemed to be some question as to whether the officials had done their duty ; whether it was the President or the Vice-President of the Executive Council who should have presented the petition. But, with the evidence of the Clerk in our possession, there need be no further doubt about the matter. The petitioner made it clear, when he presented the petition to the Clerk, that he intended to go on, and

according to the law of Western Australia, he knew perfectly well the way to go on with his petition, and his very failure to proceed after having said that he was going to proceed in a certain direction proves that the neglect rested solely and wholly with himself. I ask the attention of honorable senators to the following passage from the evidence of the Clerk :-

When I mentioned about the common law being for a member to present the petition, they said, to the best of my recollection - " Oh, 3'es, we have thought of that, and we have a member in our eye." Then they asked - "Would there be any difficulty in getting the petition from you ?" I said - "ITo, I shall lock it up, and I shall take it down to the chamber every day, and put it in my drawer of the table, and as soon as a member comes up to me and says that he has undertaken to present it, I shall hand it to him." I said - " Until some one comes up to me for the petition, it will go back to my office each day." That is the extent of what happened between us.

In the face of this statement, and knowing that no honorable senator would have refused to present the petition, if asked, it is quite clear that the petitioner alone was responsible for it not coming before the Senate in a proper way. I feel sure of this because of certain things I have heard privately as to the attitude which was taken up by the petitioner.

Senator Sir John Downer

- That is the worst of it. The honorable senator has got private information I do not know any thing about

Senator DE LARGIE

- Perhaps the honorable and learned senator has obtained information privately that I do not know anything about ?

Senator Sir John Downer

- I wish I had. For instance, they say that the honorable senator is the person accused of having bribed. I do not believe that.

Senator DE LARGIE

- That is utterly false so far as I am concerned, and no one dare say it is not. But I have heard it said that the honorable and learned senator has a brief in this case. One thing is about as dishonest as the other.

Senator Sir John Downer

- It would be if it were true, but the honorable senator knows that that is false as far as I am concerned.

Senator DE LARGIE

- And the other is false as far as I am concerned. I know that the demeanour of the petitioner for weeks and weeks in this place was such that he was in very grave doubt whether he would go on with his petition. There is no doubt that he knew the law, for we find this statement in the evidence of the Clerk - They referred me to a section of the Constitution, and said that it had to be presented under conditions prescribed by the law of Western Australia, the Commonwealth not having provided the *modus operandi*. As it happened, my attention had never been drawn to the law of Western Australia, and I did not know it; but they were good enough to produce the Electoral Act and show me the sections governing the procedure in regard to presenting a petition against the return of a member.

The motion of Senator Glassey is the only reasonable one which we can adopt, and in the light of the evidence of the Clerk, there is nothing left for the Senate to do but to reject the petition.

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Senator Dobson

- I feel it my duty, sir, to rise to a point of order. Senator Glassey is asking the Senate to undo the resolution which it passed some weeks ago -

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

My point is that the word " entertaining " meant that the committee should inquire into the matters of the petition, and that they should then have given us a further report on the merits of the case after hearing the evidence. They allege that because they have taken the evidence of the Clerk, therefore something new has arisen which justifies them in reporting again, on the ground that they have made further inquiry. I desire, if I am in order, to cut that ground from under their feet, by saying that I do not recognise the Clerk as having given any evidence affecting this matter, excepting the fact, which everybody knew before, that he did on a certain day receive the petition and the £50 deposit. Another point is that the Senate has already decided that the law - it does not say what law - does not prevent the petition from

being entertained. As I understood their arguments, it appears to me that Senators Glassey, Playford, and De Largie, are relying on the ground that the law of Western Australia does apply, that that law has not been complied with, whereas the resolution of the Senate was that the law of Western Australia did not apply, and that there was no law whatever to prevent the petition from being entertained. I would also point out that Senator Symon himself ridiculed the idea of the law of Western Australia applying. He emphatically stated his opinion that that law did not apply at all. I am sure, Mr. President, that we shall look to you to prevent the Senate stultifying itself, and to see that whatever resolution we pass is in accordance with constitutional practice, and is not a resolution which, by a side wind, undoes something which we did weeks ago after the most thorough inquiry. My first point is that no law prevents the petition from being entertained; and my second point is that the petition was referred back to the committee to be entertained for inquiry, and that that has not been done. The committee have not entertained the petition except by simply examining the Clerk on matters which any court would be bound to take cognisance of. They have by doing that sought to show that they have taken evidence which justifies them in their further report. I contend that it does nothing of the kind.

The PRESIDENT

- The point upon which the honorable and learned senator asks me to rule is this - that the Senate is precluded by its own standing orders from considering the motion moved by Senator Glassey, because on a former occasion it passed the following resolution : -

That in the opinion of the Senate the law does not prevent the committee from entertaining the petition, and that the petition be referred back to the committee for further inquiry and report. This point has not taken me by surprise, because it struck me when I first heard the contingent notice of motion that it was, if not contradictory of the former resolution of the Senate, at all events something like it. I considered the matter before I came into the chamber to-day. If honorable senators will look at the resolution passed by the

Senate, they will see that what was decided was that -

The law did not prevent the committee from entertaining the petition.

The motion moved by Senator Glassey does not contradict that. It simply says that the petition "be not further entertained." It does not say whether the law does or does not prevent the petition being entertained. It simply asks the Senate to arrive at the conclusion that the petition be dismissed. The second portion of the resolution passed by the Senate on the 25th July was -

That the petition be referred back to the committee for further inquiry and report.

The committee have made further inquiry and have presented a report ; and I do not think that it is within my province to say what the value of the evidence given before that committee is. Therefore, I rule that the motion can be entertained by the Senate.

Senator Dobson

- Do you rule, Mr. President, that the committee have entertained the petition?

The PRESIDENT

- I cannot help arriving at the conclusion that the committee have made further inquiry and have reported. As to the value of the evidence taken by them I do not think I ought to be asked to give an opinion.

Senator Dobson

- Could not the committee have entertained the petition on its merits ?

The PRESIDENT

- I do not say anything about that. This motion does not say whether the law does or does not prevent the committee from entertaining the petition ; it simply asks the Senate to order that the petition be dismissed.

Senator Sir John Downer

- Of course we come back to the question of substance - whether the committee have in their last report gone any further than they did in their original report.

The PRESIDENT

- That amounts to this - that you are asking me to say what the value of the evidence is. I do not think I should do that.

Senator Sir John Downer

- I do not wish to press the matter.

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Senator DOBSON

- The only reason why I have risen to speak to the substance and merits of the question is that I feel that, if the motion of Senator Glassey is carried, the Senate will practically, although not technically, stultify itself. I also feel that the Senate will do an act of the very gravest injustice upon grounds which honorable senators would not for one moment entertain if they realized that they were taking upon themselves the position of judges. We have been told that it was the duty of the petitioner in this case to comply with the law of Western Australia as far as he could ; and yet, because the unfortunate petitioner did comply with the law as far as he could, but did not comply with every absolute particle of it, the whole law of Western Australia upon the subject must be taken as our guide in this case. It is said that the law of Western Australia ought to apply, because the petitioner himself thought it ought . to apply. Would any honorable senator advance such an argument before a court? Honorable senators might as well say that if a certain litigant imagined that certain facts were in his favour, those facts would have to be taken to be in his favour. The committee having been told to take back their report for further inquiry, we immediately heard rumours that in all probability they would not entertain the petition, and would refuse to take evidence and to hear the case on its merits. I think that almost every honorable senator believed emphatically that the meaning of the resolution passed by the Senate was that the committee were to inquire into the merits of the petition, and examine such witnesses as both parties tendered. But all they have done is to comply with the instructions of the Senate technically by putting the Clerk into the box and taking his evidence. I affirm that there is no evidence whatever to justify the additional report of the committee, except as to facts which we have had all along, and of which we were bound to take judicial notice, that our custodian of records - our own Clerk - had received a certain petition, together with security for costs, which the Western Australian law said every petitioner should deposit.

Senator McGregor

- Then is the honorable and learned senator going to adopt that law ?

Senator DOBSON

- We are going to adopt the law of Western Australia that there should be security for costs, and that the petition should be lodged with the Clerk. Then we have to look at the law of the Commonwealth itself as contained in the Constitution. It is nonsense to say that the whole of the Western Australian law must be complied with because that law requires the Legislature to send a petition to the court. That process has no application to our procedure whatever. The Legislature in Western Australia might have found that the £50 deposit was made by a cheque which was dishonoured by the bank, or might have had various other grounds to justify it in not referring the petition to the court. But here the Senate itself is the court, and the petitioner presented his petition to our Clerk together with the necessary deposit. The whole ground upon which the further report of the committee is justified is that our Clerk has testified what we all knew all along.

Senator Fraser

- That it not so.

Senator DOBSON

- Surely we all knew that the petition had been presented and that the £50 had been deposited. If honorable senators are allowed to take that point, then I will say - what precious fools the members of the Senate made of themselves by discussing this matter for hours some weeks ago ! Every one knows there are some things of which we have to take judicial cognisance. There are certain things of which a judge takes judicial cognisance. When we have a Clerk and documents are left with him to be dealt with in a way to be determined afterwards, we are bound to take judicial notice of the fact that those documents are in his custody. Then is it not ungracious, ungenerous, and unjust not to take into consideration also the fact that no machinery whatever was formulated under which the Senate could hear petitions of this kind in its own fashion. We have not had time to devise our machinery for dealing with election petitions, and yet honorable senators are not willing to make allowances for the petitioner, who could not have known exactly what machinery he had to comply with. I think that if petitioner is refused the justice he asks for, we shall be doing a very grave injustice to him, and shall be putting the Senate in a humiliating position on the first occasion when we are asked to perform a judicial act.

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Senator Sir FREDERICK SARGOOD

- This has certainly been an unfortunate affair from the beginning. Senator Glassey took up the ground that the petition was not presented in due time. What is due time? I have looked through the Constitution, but I can not find any indication whatever as to the time within which a petition must be presented.

Senator Glassey

- What practice did the petitioner adopt?

Senator Sir FREDERICK SARGOOD

- We have nothing to do with that. He might have adopted the practice of the British Parliament. That would not bind the Senate in the slightest degree.

Senator Glassey

- Does the honorable senator find anything in the Constitution relating to the amount of the deposit, or the time in which a petition should be lodged?

Senator Sir FREDERICK SARGOOD

- The question of whether a deposit of £50 or nothing was lodged does not affect the Senate. In neither case would the petitioner have violated the Constitution under which the Senate is constituted.

Senator Glassey

- Should there be no rule of procedure ?

Senator Sir FREDERICK SARGOOD

- Yes ; but up to the present there are no rules governing this questions. We have no more to do with the law of Western Australia than we have to do with the law of South Australia or Victoria. The only law that we have to consider in this connexion is section 47 of the Constitution, which deals with disputed elections. The preceding section does not affect the question now before the Senate. That has to do with the election of a member under the laws of a State, unless in the meantime the Senate has taken certain measures.

Senator Glassey

- Against what law has Senator Matheson offended ?

Senator Sir FREDERICK SARGOOD

- He has not offended against any law. I believe he could have taken his seat in the Senate from the first without rendering himself liable to any penalty. Section 47 of the Constitution provides that-

Until the Parliament otherwise provides -

This Parliament has not provided anything up to the present time - any question respecting the qualification of a senator or of a member of the House of Representatives, or respecting a vacancy in either House of the Parliament, and any question of a disputed election to either House, shall be determined by the House in which the question arises.

The matter must necessarily be determined by the Senate in any mode it thinks fit. Then again Senator Glassey takes up the ground that the committee was authorized only to take the preliminary steps in this matter.

Senator Glassey

- No ; I said the committee received no instructions whatever.

Senator Sir FREDERICK SARGOOD

- I took down the words as Senator Glassey uttered them, but I am prepared to accept the statement he has just made. Let me remind him that on the the 6th June the Postmaster-General, by leave of the Senate, moved -

That the President be requested to lay upon the table as early as practicable his warrant for the appointment of a Committee of Elections and Qualifications, consisting of seven members of the Senate, to inquire into and report on all questions respecting the qualification of any member of this House, or respecting a vacancy in this House, and all questions of disputed elections to this House.....

Not " some " questions, but " all " questions. On the 27th June the Vice-President of the Executive Council moved -

That the petition be referred to the Elections and Qualifications Committee, for inquiry and report.....
Not for partial inquiry and report, but for full inquiry.

Senator Glassey

- The word " full " was not used.

Senator Sir FREDERICK SARGOOD

- Surely Senator Glassey would connect that motion with the formation of the committee which had to consider all questions. I fail to see why he should attempt to limit the powers of the committee as appointed on 6th June. On the 27th June this question was referred to it, without any limitation of its powers. Therefore, I am justified in saying that the committee was not only empowered, but practically directed, to make full inquiries into all matters relating to the election. The honorable senator says that the petition was not lodged in time. Up to the present moment any member of the Senate is liable to have a petition lodged against his return, until the Senate takes some steps either by act or standing orders, fixing the time within which petitions may be lodged. Senator Glassey will find that in the draft standing orders there are three or four rules providing for this matter, but up to the present time there is nothing in the Constitution or in our standing orders requiring a petition to be lodged within a certain period.

Senator McGregor

- Nothing providing for petitions of any kind.

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Senator Sir FREDERICK SARGOOD

- No; there is a perfect blank in that respect. On the other hand, there is nothing to prevent any one from presenting a petition on any subject to the Senate. If any one chooses to present a petition against the return of any member of this Senate, the question has not to be decided by the law of any State.

Senator Glassey

- I should claim the protection of the law of my own State in such a case.

Senator Playford

- And so would I.

Senator Sir FREDERICK SARGOOD

- Then the honorable senator would be resting on a broken reed. According to section 47 of the Constitution, the power is vested, not in one State, but in the representatives of all the States assembled in the Senate. The Senate alone can decide whether it should even receive a petition.

Senator Glassey

- Then, in such a case, there would be a political, and not a judicial, trial.

Senator Sir FREDERICK SARGOOD

- That is beside the question. Perhaps I agree with Senator Glassey as to the mode in which a petition should be dealt with, but the Constitution itself places the matter solely within the determination of the Senate. In this case the Senate decided to request the President to appoint an Elections and Qualifications Committee. That was done. It then decided that this petition should be remitted to the committee for inquiry and report. The committee met, and there was a considerable conflict of opinion as to what the preliminary proceedings should be. Unfortunately, up to the present time there has been no finality in the proceedings of the committee in regard to this question, nor is there any likelihood of finality. Even assuming that Senator Glassey's motion was carried, and that we decided not to entertain the petition, I do not think there would be anything to prevent the petitioner from bringing up another petition on the following day. The motion is not that the Senate should decline to entertain another petition, but simply that this petition should not be entertained. Senator Downer very properly took up the ground that justice should be done. The word "justice" is sometimes open to two interpretations. There is such a thing as "legal justice," if I may use that term, and there is also "equitable justice." That they are not always synonymous terms so far as disputed elections are concerned is proved by the fact that under the Victorian Constitution and parliamentary standing orders it is laid down that the strict legal procedure need not be followed in relation to elections, the object being to insure that the equities and justice of a case shall be ascertained.

Senator Sir John Downer

- I think I used the word "right," not "justice."

Senator Sir FREDERICK SARGOOD

- The honorable and learned senator said "Do justice."

Senator Sir John Downer

- Yes, I will not depart from that.

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Senator Sir FREDERICK SARGOOD

- We both want to see justice done. The petitioner has adopted, rightly or wrongly, a certain procedure which in my opinion does not affect the case in the slightest degree. The Senate has decided that the petition should be received, and has forwarded it to the committee. The committee is hopelessly divided, and cannot come to any decision. A most unfortunate delay has taken place, entailing very heavy costs and loss of time upon both parties. Western Australia has lost the services of a valuable representative during all this time, while the Senate itself has been deprived of the services of a valuable member. Seeing that this delay has not arisen from any fault on the part of either the sitting member or of the petitioner, but has been due rather to the want of action on the part of the Senate itself, it is hard that the parties should alone have to suffer. The question is, What is to be done ? It appears to me that it would be useless to remit the matter to the present committee. On the other hand, it would be a very serious thing to adopt the proposal submitted by the leader of the Senate and practically discharge the committee. I certainly have never known of a case of that kind in my experience. The difficulty would be overcome if the members of the committee could see their way clear to resign and leave the matter open to the President to take what action he might think fit in the circumstances. I should hesitate a great deal before taking such a stringent and novel action as that recommended by the leader of the Senate. I should rather see the matter delayed a little longer before we are asked to vote upon such a strong proposal.

Senator O'Connor

- What would the honorable senator propose? We must do something.

Senator Sir FREDERICK SARGOOD

- I am willing to state frankly that, in view of the position, the members of the committee would clear the way if they resigned of their own motion. Failing that the Senate must do something. On the one hand, Senator O'Connor asks us to discharge the committee and to say practically that they have failed to carry out the instructions of the Senate.

Senator Sir John Downer

- But the committee has said that.

Senator Sir FREDERICK SARGOOD

- But that has arisen from the unfortunate illness of one of the members of the committee, whose retirement has led to the committee being equally divided - three on each side. Had that honorable senator been in his usual health, some report would have been brought up. However, there is a deadlock, and, if the members of the committee do not see their way clear to resign in the exceptional circumstances of the case, I am not sure that the Senate will not be compelled to adopt the course recommended by the leader of the House.

Senator Sir John Downer

- I think it will.

Senator Sir FREDERICK SARGOOD

- In the circumstances my sympathy lies very largely with the sitting member. I know nothing about the merits or demerits of the case. I have taken care to keep myself free from them, but, naturally one's sympathy goes out towards a gentleman who has fought for his seat, and who has occupied it for some time with credit to himself.

Senator Glassey

- What about the honorable senator's vote? His sympathy and vote should go together.

Senator Sir FREDERICK SARGOOD

- My sympathy and vote would, as a rule, go together, but I recognise that there is such a thing as justice to be done to the other side. A man has a right to petition against the holding of a seat by any senator, and it would be a very serious thing to deny the right, even if the petitioner has delayed in taking action or followed the wrong procedure owing to some misunderstanding. As a matter of fact, I think the whole procedure was wrong from beginning to end, and that the petitioner need have paid no attention whatever to the Western Australian Act. Since I looked into the matter I have always thought so. Still he did adopt a certain course, and the committee are under the impression that because he adopted that course only to a certain extent he is therefore to be put out of court. I cannot go so far as that. If it comes to a division to-day I shall be compelled to vote for the amendment, but I would very much rather not be called upon to pass what I think would be to a certain extent a slight upon the committee. Under the

circumstances, if I were a member of the committee I should unhesitatingly resign.

Senator FRASER

- I did not intend to speak at all, but I think I have a right to say that I retired from this committee in very bad health, believing that it would go on with its business just the same in my absence as in my presence.

Senator Playford

- The honorable senator did not know about this deliberative vote.

Senator FRASER

- But for the deliberative vote it would have been so, and we should now probably have had a majority report from the committee.

Senator Sir John Downer

- I do not know ; the honorable senator had grave doubts.

Senator FRASER

- I have always grave doubts until my mind is made up. I think every honest man should. 'I try to see both sides if I can. I may be wrong, and perhaps I am wrong now, but I do not claim infallibility. I believe that this petition should have been presented by a member of the Senate, because I hold that if the Government take up a matter of this kind, it is only a question of pushing the wedge home, in order to get rid of a number of honorable senators. I have seen that kind of thing done in times past. I therefore hold that the Government should be the last to take up a position of this kind, and it cannot be denied that there are members of the Senate who would have presented the petition. In my humble opinion the petitioner had just about made up his mind to abandon the thing. That is how it struck me then, and strikes me now.

Senator Sir Frederick Sargood

- Has the honorable senator any grounds for that statement, because it is new to me ?

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Senator FRASER

- Yes, I have some grounds for the statement.

Senator Sir John Downer

- That is what I have been trying to get - grounds for the conclusions of the other side.

Senator FRASER

- I shall give honorable senators my grounds for the statement. The evidence given before the committee by Mr. Blackmore leads me to that view. It may be erroneously, I do not know, but I am not going to be led or dictated to even by my respected fellow committeemen.

Senator Sir John Downer

- It led the honorable senator to that conclusion before he heard it.

Senator FRASER

- No. That is what decided me in the matter. I was not present when the debate took place before in the Senate.

Senator Sir John Downer

- Mr. Blackmore had not given his evidence then ; that is what I mean.

Senator FRASER

- We know that the House of Representatives has already thrown out a petition upon grounds similar to those upon which we are asked to throw this out, namely, that the petitioner had not complied with certain procedure. It would be absurd to say that the petitioner need not adopt any procedure. The petitioner in this case deliberately adopted the procedure of Western Australia, but when he came to a critical point he abandoned it. Speaking of the matter of justice, I do not think we have any right to do injustice to the sitting member, because the petitioner has failed on many points in regard to his petition. Holding the opinions I do, if a division is called for I shall have to vote with my honorable friend Senator Glashev

Senator O'KEEFE

- On the 25th July last we had this matter before the Senate, and after carefully listening to the arguments of legal gentlemen on either side, and being left hopelessly befogged as to whether the petitioner had done all that was required of him, I then recorded my vote in a certain direction. I thought I was justified in so recording it, using my own opinion as a layman and entirely disregarding the opinions given by legal gentlemen on both sides in the Senate. AVE had then no evidence before us that would enable a layman

to make up his mind, and the arguments from either side were equally convincing, or unconvincing. But since that date, on the 15th August, something transpired which has put into the hands of honorable senators evidence which might cause them to alter the opinions they expressed on that occasion, evidence which, had I then been in possession of it, would have made me record my vote in another direction. The Clerk of the Senate has given evidence to the committee showing that the petitioner knew what procedure he ought to have taken. I did not know that when the matter was previously before us, because that evidence had not been given. I wish briefly to justify the change in my opinion, and the change in my vote. I said then I was giving a vote for the motion proposed by the Vice-President of the Executive Council in order that the matter might be referred back to the committee, because I had been led to believe that the petitioner had done all that he could reasonably be expected to think he had to do. I find from the evidence given by the Clerk that he did not do all that he knew he was expected to do, and I shall, therefore, have to vote for the motion submitted by Senator Glassey.

Senator BARRETT

- Before the motion is put I should like to say that if we were in a difficulty on the previous occasion when the Senate divided upon this matter we are in a greater difficulty at the present moment. I think the Senate ought not to divide upon the question to-da)\

Senator Harney

- We have had enough of it ; let us get done with it.

Senator BARRETT

- That may suit the honorable and learned senator, but in this case we have got to do justice, and there is a suspicion in the minds of the public outside that the petitioner is not receiving justice. We cannot shut our eyes to that.

Senator McGregor

- Where does the honorable senator get that from t

Senator BARRETT

- I have heard it as common talk outside.

Senator Pearce

- If the honorable senator were in Western Australia he would find there was a strong suspicion that the sitting member was not receiving justice.

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Senator BARRETT

- I am not in Western Australia but in Victoria, and in Victoria it is common talk that so far as this case is concerned there is something being kept behind., In the interests, therefore, not only of the petitioner but also of the sitting member, we should approach this question in such a way that we shall do justice to both sides, and that we shall not only satisfy the public outside but be clear in our own minds that we are doing what is right in regard to it. Senator Sargood pointed out in the course of the discussion the difficulty he had in making up his mind, and it is a difficulty that I feel. Through certain circumstances that have arisen the committee was evenly divided. The result has been a dead-lock, and they bring back a report to the Senate in which they say they are hopelessly divided. What in the circumstances is the common-sense proceeding to adopt? If it were an ordinary legal case in which a jury disagreed, what result would follow?

Senator Harney

- A nolle prosequi would be presented if we could only have the same jury.

Senator BARRETT

- A new trial would take place in regard to the petition, and justice, if it be possible to mete out justice in this particular case, would be given to either side. The difficulty I have is that I do not desire to pass a vote of censure upon the committee, and I do not by my vote wish to take a course unknown in the annals of our parliamentary history. Under the circumstances it would be a good thing if the debate were adjourned for a few days or a week in order to allow the committee themselves to take a certain course. If the committee did not feel it is their duty to do so, I should be prepared to vote in the way I think right in the matter. I hold that there should be an inquiry into the merits of the case. I hold that strongly, and if to-day I have to record my vote it will be in that direction. The whole thing is unfortunate, and I believe that if the course I suggested were taken, and a new committee was formed on the nomination of the

President, there is no reason to doubt that the new committee would approach the case in a judicial frame of mind, and do justice to both parties. If in the present circumstances I am compelled to give a vote to-day, it must be in the direction suggested by the leader of the Senate, in order that we may have a new committee to hear the petition on its merits. Since we came to the last decision on this question I hold that the committee have not given the matter the consideration which they should have given it. That, of course, is a matter of opinion, and honorable senators have the right to differ with me as to that. I repeat that I think it would be a good thing to adjourn the matter for a day or two, in order to see if we could not discover some way out of the difficulty the Senate finds itself in.

Question - That the words proposed to be omitted stand part of the question - put.

The Senate divided -

15

AYES

6

NOES

Majority 9

AYES

NOES

Question so resolved in the affirmative.

Amendment negatived.

Original question resolved in the affirmative.

PAPER

The PRESIDENT laid upon the table

A letter from Mr. J. B. Marsden, architect, with tracing of a design for small desks for the members of the Senate.

POST AND TELEGRAPH BILL

In Committee(consideration of message and amendments of House of Representatives resumed from 4th October, vide page 5641).

Clause 27 (Registration of newspapers).

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Postmaster-General

Senator DRAKE

. - There are only two comparatively unimportant points on which the Senate is not in accordance with the other House. When the Bill came back from that House, it was accompanied by a schedule of 104 amendments. We disagreed with seven of those amendments and agreed to a number of others with consequential amendments. The other House has given way in the case of six of the amendments on which we disagreed, and has taken exception to our consequential amendments in only one case. I would not like to say that either of the two points of difference between the Houses is in itself unimportant, but I think as compared with the great importance of the Bill they sink into insignificance. It is exceedingly desirable that the Bill should be passed. The date which is fixed for the Bill to come into operation is the 1st of December, and there is a general feeling throughout Australia that as soon as possible uniform regulations should come into operation. I desire to have regulations ready to be tabled immediately the Bill becomes law. It is also desirable that a Bating Bill should be introduced dealing with newspaper postage and telegraphic rates, and I hope to be able to bring it forward during the present season. For all these reasons, it is very desirable that we should come to an arrangement with the other House, and seeing that it has met us very fairly, it is not unreasonable that we should yield to them in the two matters which are outstanding. There are only two, because the three amendments are substantially the same. The question is whether the word " seditious" shall remain. The objection which has been taken in the other House to it is that sedition is a thing which it is impossible to define.

Senator Playford

- -They do not say that it is impossible, but that there is a difficulty in the way.

Senator DRAKE

- It is a difficulty almost amounting to an impossibility, and their contention has been that it is not desirable

that there should be a power to interfere in any way with correspondence on the ground that it contains matter which could come under a word, the definition of which is so difficult, if not impossible. The offence can be dealt with in another way. My sympathy goes always in the direction of maintaining the utmost secrecy with regard to correspondence. My inclination is to preserve everything passing through the Post office inviolate as far as that can possibly be done. I should prefer that the Postmaster-General should not be charged with the duty of stopping any correspondence on such grounds. I move -
That the committee do not insist upon the amendment inserting the word "seditious" in sub-clause (1) of clause 27.

Senator PULSFORD

- I observe that Senator Drake repeatedly used the term "correspondence," as if to convey the idea that the clause gives some power to open letters to see if they contain anything seditious, but it is necessary to bear in mind that it deals with only newspapers, and that there is no question about the inviolability of matter passing through the Post-office.

Senator Drake

- I thank the honorable senator for the correction; I thought it dealt with correspondence.

Senator PULSFORD

- I think it is desirable to retain the word "seditious." If we do not have some provision of this character, what sort of stuff may get into the columns of newspapers and be disseminated throughout Australia? I do not think there is any other clause which gives the Government any power to check the issue of matter which may be of a very grave and serious character. I am quite sure that the Postmaster-General is not a man who would pull up a newspaper for anything which was not of a serious character; but we can all conceive of publications which would be so gravely seditious that it would be his duty to stop their circulation through the Post-office, even if this word were taken out of the clause. Therefore, I think we shall only be doing our reasonable duty if we allow these words to remain in, and authorize the Postmaster-General to stop the carriage of newspapers which contain matter of a very gravely seditious character. I hope the Senate will insist upon the maintenance of the word.

Senator HIGGS

- I hope the committee will do nothing of the kind, because it simply means that by retaining the word we may risk the passage of the Bill for the present session.

Senator Pulsford

- No, no!

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Senator HIGGS

- The honorable senator does not seem to realize what his protest or objection means. The other House have met us in the most friendly way by accepting over 100 of our amendments without any question whatever. If the honorable senator had been present when our second message went down, he would have seen that we were met in the most friendly manner by the other Chamber. Are we going to hang up this Bill because certain senators think that there are existing in the Commonwealth certain dangerous persons who are likely to disseminate sedition? I have been amongst crowds of people in all parts of the Commonwealth, and I think that we are a very law-abiding community. The position taken up elsewhere is, that these offences, if committed, may be dealt with under the State Acts. Furthermore, the other Chamber is of opinion that it is very difficult to define the word "sedition." Such being the case, I think we should give way, and let the measure go through as soon as possible.

Senator FRASER

- I hope that we shall not give way. I can hardly understand honorable senators saying that it is difficult to define the word sedition.

Senator DAWSON

- What is the honorable senator's definition?

Senator FRASER

- If seditious language is used, or there is an attempt to send it broadcast, the Postmaster-General is a very good authority to decide the point.

Senator DAWSON

- But what is meant by the word "sedition."

Senator FRASER

- A man who is hostile to his country, and who refuses to obey the laws of his country and sets them at defiance, and who seeks to bring his country . and its laws into disrepute, is guilty of sedition.

Senator DAWSON

- Then the honorable senator would condemn all the labour party ?

Senator FRASER

- If they are against their country, certainly.

Senator DAWSON

- We want to improve the laws of the country.

Senator FRASER

- The labour party are not in favour of disseminating seditious language.

Senator DAWSON

- We are very often against the Government of the country.

Senator FRASER

- So am I, sometimes, but that is not the point. We have adopted a Constitution and a form of government in this country. We believe we have one of the best forms of Government on the face of the earth. We certainly should not allow a small section of the community to spread broadcast literature that will poison the minds of the people. I hope that the Senate will adhere to the word and will reject the amendment of another place. They only made this amendment by a majority of one. It should not be difficult to get that one member to go over to the other side. Let us therefore adhere to our previous decision.

Senator PULSFORD(New South Wales). - I should like the committee to bear in mind that since this Bill was first introduced the President of the United States has fallen a victim to assassination. That was an act of sedition, and there is a very strong awakening throughout the United States as to the evil consequences that follow from sedition being preached in the newspapers. Publications such as have appeared in the past in America are today being curbed, and efforts are being made to punish the authors. If we remember these facts and do our share to keep down such dangerous publications we shall do well. There is no desire to hang up the Bill, and the remarks of the Postmaster-General and Senator Higgs on this point might very well be met by the representative of the Government in the other House saying that the Government want to get the Bill through at once and that this end will best be served by the amendment not being insisted upon.

Senator STEWART

- I do not think that any honorable senator who loves liberty, as we all profess to do, will have the slightest sympathy with Senator Pulsford in his attempt to Russianize our institutions. The honorable senator tries to frighten us with the boggy of the assassination of the President of the United States. He says that that assassination was brought about by the reading of seditious literature in the newspapers. But will he give us a definition of sedition ? It appears to me that although Senator Pulsford is a most serious student of the question of free-trade, and a tremendous authority upon statistics, he has never studied history. If he cares to look into the history of Great Britain, he will find that the people who, less than 1 00 years ago, advocated the franchise which at present exists in that country, were taken up, tried, and transported for sedition. We ought to learn from the experience of the past. We cannot promote liberty by stifling discussion. After all, who is to judge of what is sedition and what is not ? A number of people in Australia would consider it seditious if I were to get up and advocate the abolition of the monarchy and the institution of a republic. But I claim that I have a perfect right as a citizen of this country to advocate any change in the system of government if I consider that our present system is capable of improvement.

Senator Playford

- But the honorable senator has no right to advocate it by violence.

Senator STEWART

- I should never think of advocating a change by violence.

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Senator Fraser

- That is what it leads to.

Senator STEWART

- Why should it lead to that ? Does not the honorable senator see that the conditions to-day are entirely

different from what they were a century ago ? At the beginning of the last century only a very limited number of people possessed the franchise. If they wanted any change in the Government the only way they could obtain it was by violence. It is perfectly well known that if the Duke of Wellington had not backed down in 1832 there would have been violence. The people of England were quite prepared for rebellion at that time, and if the Duke had persisted in refusing the franchise there certainly would have been bloodshed. We stand in a different position to-day. The people have the power in their own hands. Every man possesses the franchise. When the ballot is in the possession of every citizen there is no reason to resort to the bullet. There is not the slightest idea that anyone in Australia is going to advocate the use of force to bring about any particular change in our political system. If any one does, he offends against the laws of the country, and if he can be tried under the common law, there is no need to make this postal measure a special vehicle for legislation on the subject. I shall certainly support the Postmaster-General in the attitude which he has taken, up.

Senator HARNEY

- I cannot see any reason why we should not adhere to the amendment originally passed by the Senate. The clause itself seems to be aimed at authorizing the Postmaster-General to remove from the register any newspapers which offend against the law. The offences against the law prescribed in this Bill are sedition, blasphemy, indecency, or obscenity.

Senator Playford

- We have given up the word " blasphemous." We could not define it very well.

Senator HARNEY

- Those four words stood in the Bill originally, and they seem to be exhaustive of the character of the offences against the law which can be committed by a newspaper. Why should we eliminate from these words one which will render those which remain not exhaustive of the possible offences that may be committed? If we strike out the word "seditious," we leave uncovered the power given to the Postmaster-General to remove papers that commit offences that are of frequent occurrence. It has been said that there is more difficulty in defining sedition than there is in defining indecency or obscenity. We must allow a certain discretion to the administrative officers in this case ; but I take it that " sedition " instead of being less definite in character is considerably more definite than either "indecent" or " obscene." It has already been defined by Stephen. The definition he gives is - to incite any person to commit any crime in disturbance of the peace, or to raise discontent or disaffection among Her Majesty's subjects, or to promote feelings of ill-will and hostility between different classes of such subjects by unlawful means. Let me put this to the committee. Suppose we were to substitute for the word " seditious," the definition of it which I have quoted. Is there any one here who would argue that a newspaper that attempted to excite discontent or disaffection by unlawful means ought not to be removed from the register 1

Senator DAWSON

- Does it say by " unlawful means " ?

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Senator HARNEY

- The definition of unlawful is the doing of something by any means that are not warranted by the law of the land. No reason can be advanced for making an exception in favour of newspapers that offend other than by publishing indecent or obscene matter. Senator Higgs said that the House of Representatives had treated us very fairly, that they had consented to a hundred or more of our amendments, and that it would be somewhat discourteous to run foul of their wishes over a mere trifle. If it is an immaterial amendment, I want to know why the House of Representatives persists in demanding that we should eliminate from the category a word which is included every day in the stereotyped phrase? Any one who has read a law book dealing with offences that can be committed by newspapers must know that the word "seditious" is always coupled with the words " indecent," " obscene," and "blasphemous." If the House of Representatives want us to depart from this time-honoured category, and the amendment is immaterial, why should we give way ? If it is material it becomes material because those anxious to have the word eliminated from the Bill see that it designs to interfere with something that they anticipate may be committed. If they think it immaterial, they have no ground to stand upon. If they think it material their ground must be that they apprehend there will be something published, which, to the ordinary impartial

judicial mind, would answer the description of being seditious.

Senator DAWSON

- Is there no other power to deal with seditious matter ?

Senator HARNEY

- There are other powers in this Bill, just as there are other powers for punishing a person using, or publishing, indecent language. This clause, however, aims not at the punishment of the offender, but at the removal from the register of a newspaper contrary to public policy and public right.

Senator DAWSON

- Public policy is not always public right.

Senator HARNEY

- It is somewhat difficult to distinguish between the two ; but we generally understand public policy to be this : - By the laws of civilization, both written and unwritten, there are certain things which every reasonable-minded person objects to. Any one of these is said to be contrary to public policy. It is entirely contrary to public policy that a newspaper should be allowed to remain on the public register which could be dealt with in a court as being contrary to the law. If the matter complained of is not contrary to the law, then it is not seditious, and the newspaper will remain on the register. If it is contrary to the law, and capable of being dealt with in the courts, then the newspaper should not be allowed to remain on the register.

Senator Stewart

- Why not bring the question before the court?

Senator HARNEY

- The answer to that is obvious. The Postmaster-General, in carrying out the provisions of this measure, has to do a great deal at his own risk. If he removed a newspaper from the register on the ground that it contained not merely seditious but offensive or indecent matter, and action were taken with the result that it was proved that it did not contain that matter, then this measure would be no answer by the Postmaster-General for his action. I have nothing further to urge. It certainly does seem to be somewhat extraordinary that this exception should be asked for in the case of seditious language. What is the difference between that class of offence and the other evils that we deal with in the clause, that it should have this exemption ?

Senator DAWSON

- It cannot be defined.

Senator HARNEY

- It is more easy to define than either obscenity or indecency.

The true object of putting all these words in the clause is not that the Postmaster-General may become captious in his criticism of newspapers filed on the register, but that the power may rest in his hands, if the occasion arises, to destroy that which, according to public opinion and the laws of the land, ought not be allowed to exist on a record available to the public. I think we should insist upon the word being retained in the Bill.

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Vice-President of the Executive Council

Senator O'CONNOR

. - It appears to me that Senator Hanley has not given sufficient weight to the reasons which exist against a provision of this kind, altogether outside the domain of lawyers. It is right that what is seditious is merely a question of degree, that the sedition of today may be the popular parliamentary cry of a few years later. If the honorable and learned member's definition is to be accepted - and no doubt it is a true and proper definition of what is seditious - then anything which involves an attack upon the existing state of things, and suggests that it should be carried out by unlawful means might be sedition. As Senator Harney knows, the term unlawful is not confined merely to offences of violence. The term may apply to means that are not recognised by the law. If a combination to bring about an alteration of the law, or it might be a strike, or any combination which in the old days was unlawful, no doubt a Judge would have to hold it to be seditious. The difficulty of giving a power of this kind may be described very shortly. The power is to be exercised by the Postmaster-General upon his own initiative and responsibility. He has an arbitrary power, before the matter is decided, of saying whether the newspaper is to be carried through the post or

not. The question of sedition will involve in most cases political considerations, and that is the great difference between dealing with this and questions of indecent and obscene matter. In dealing with indecency or obscenity one deals with something upon which the whole community are in a certain sense agreed. The whole community are certainly against what is indecency or obscenity, but in regard to what is seditious the people are not unanimous. There is a party always trying to bring about a certain condition of affairs. It is not a wise thing to place within the power of any administrative officer the light to decide a question of this kind, which may be very largely a political one.

Senator Fraser. - That right has rested with the Postmaster-General since the beginning of Australian history.

Senator O'CONNOR

- The giving of that power was probably the blind adoption of some words which were contained in the English Postal Acts. Every honorable senator will recognise that freedom of speech has advanced very much since the days - some 30 or 40 years ago - when these words were recognised as proper. We have to legislate according to the times.

Senator Harney

- In some respects Shakespeare would be indecent to-day.

Senator O'CONNOR

- And seditious also in some respects. Is it wise to place this power in the hands of a Minister controlled by the decision of a Judge of the High Court? If the question came before the High Court, the Judge would have to decide simply whether, according to the definition laid down by the law, the matter complained of was seditious or not, and he would be bound to follow such a statement of the law as that which Senator Harney read. That is to say, we might have a question of whether or not a newspaper should be carried through the Post-office determined by the Judge on a statement of the law pronounced by some eminent Judge 50 years ago. This discretion of the Minister is to be controlled by the cast-iron rule, which must be administered by the Judge who has to deal with the matter under this measure. The question is whether, considering all the powers that have been given already to the Postmaster-General, considering the other remedies still left for dealing with seditious matter, it is wise to place a power in the hands of the Postmaster-General, in the exercise of which there might be a great deal of doubt and difficulty. I think it must be evident that it is an exceedingly arguable question whether this power should be given. It certainly is against all tendencies of modern thought and freedom of speech to give such a power. We have to remember that this Bill contains many matters with which the other place disagreed in the first instance. We have come almost to a conclusion, and if there is a fair reason why we should give way in regard to any of these amendments, then for the sake of completing legislation we should give way on this particular point.

Senator PULSFORD (New South

Wales). - It is somewhat remarkable that the Senate should now be listening to Senator O'Connor, asking it to omit from the Bill a word which was inserted by the Government, and the inclusion of which he supported on a previous occasion. I should like the Senate to remember that the remarks we have had from Senator O'Connor amount to very little more than special pleading ; he has been showing us what we know : that there are questions of sedition which may be difficult at times to define. But honorable senators are not likely to imagine that the Postmaster-General would for a moment think of removing from the register of newspapers, or of stopping from transmission through the post, any newspaper because of the fact that it contained an article simply of a debatable character. The clause is inserted in order that the Postmaster-General may have power where liberty - which is precious to us all - has degenerated into licence, and where evil is likely to follow. In these circumstances I hope that the Senate will retain the words originally inserted in the clause by the Government and always supported by the Senate.

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Senator MCGREGOR

- I wish I were a lawyer, because lawyers can argue always in so many different directions. It does not matter whether they want to prove that black is white or white is black ; they have always got arguments to support their case. I should like honorable senators to look at the position in which Senator Harney has placed himself. Not many months have elapsed since that honorable and learned senator was using all his oratory and eloquence in an effort to convince us that the Postal Bill should not be made an

instrument to carry out the law. That was in connexion with another matter that was discussed at very great length. To-day, because something in connexion with the political morals of the people cropped up, he takes the opposite direction. One day he is flying with the wings of an eagle, and the next with the wings of a dove. Senator Pulsford was continually croaking that we were getting away from the condition of things that existed 50 years ago. A couple of years ago, if any individual had expressed certain opinions in connexion with the action of the British Government in South Africa, people would have called for his scalp, and Senator

Fraser would certainly have said that he was seditious. Do not honorable senators know that in some of the States civil servants have actually been discharged for expressing an honest opinion in a certain direction?

Senator Fraser

- I would discharge any man who was against the British flag. I would string him up mast high.

Senator McGREGOR

- There have been a great many patriots in times past--

Senator Fraser. - I rise to a point of order. If the honorable senator will insist upon speaking in such a way as to offend and insult honorable senators, he cannot expect to have silence amongst us.

The CHAIRMAN

- There is no point of order.

Senator McGREGOR

- Honorable senators are getting disorderly. I was asking the honorable senator who has just sat down whether a certain thing was not a fact. The honorable senator knows that it is, and yet he says he would strangle anybody who would be against the British flag.

Senator Fraser

- Certainly any one against my country.

Senator McGREGOR

- I am not going to object to the honorable senator for doing so. In defence of the British flag I probably have done as much as and would do more than the honorable senator ; but what I want to point out is that the greatest patriots Britain ever had were those who had the courage to point out her faults and mistakes.

Senator Fraser

- Not when she was fighting - after the fighting was all over.

Senator McGREGOR

- If the honorable senator had lived in the days of Cromwell, would he have hanged him ?

Senator Fraser. - We need not go back that far.

Senator McGREGOR

- If the honorable senator had lived in the days of King William, I suppose he would have hanged him. They were all seditious in their turn, but they came out on top, and of course they were great men. That is the reason why I think we should not further delay an important measure of this description by going into the particular phases of loyalty or disloyalty which may be involved in such a term as seditious. It depends upon the administration of the department at the time, and upon the administration of justice afterwards. One honorable senator sitting as a judge in the case of a certain expression might declare it seditious, while another might declare that it was not. The history of Great Britain has furnished hundreds of examples where, even in connexion with the administration of the law, party prejudice has led people astray. I hope that, in the interests of the country, nothing will occur to retard the passage of this Bill. We have ample opportunity in the Commonwealth or in the different States to pass laws to deal with those who act against the interests of their country, and we should not introduce our party inclinations or feelings in the discussion of this measure. I hope the Bill will be carried in the way in which it left the House of Representatives, and that it will become law as expeditiously as possible.

Senator Major GOULD

- This is by no means a new question. We are aware that certain honorable senators were opposed to the inclusion of the words " seditious " and " blasphemous " in the Bill, but the Senate determined to insert those particular words, and at the instance of Ministers. Clause 27 was debated at considerable length, and amendments were made in it, but the words " seditious " and " blasphemous " were left in by the

Senate. The other House struck those words out, and when the Senate was called upon to consider the matter again, we met the other House by omitting the word "blasphemous," and retaining the word "seditious." Now the Senate is asked to say that the matter is so little worthy of consideration that it is prepared to back down at the request of members of the House of Representatives.

Senator Drake

- Look at the number of matters in which they gave way to us.

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Senator Major GOULD

- I admit that they did give way in certain matters, but not in matters upon which strong opinions were expressed. It has been said that "seditious" is hard of definition. We have heard a definition of it, and honorable senators must bear in mind that the matter will be entirely in the discretion of the Postmaster-General. He will not be compelled, because of a legal definition, to say that a paper shall not be permitted to go through the post-office. We may assume that the discretion will be exercised wisely, and that it will not be merely for a technicality that a newspaper will be interfered with. Admitting, for the sake of argument, that the

Postmaster-General would not use his discretion wisely, how long would honorable senators keep a Postmaster-General who grossly abused his position, and depended upon pure technicalities? I ask, is it not desirable that the Government should be able to exercise this power in order to prevent what might be really seditious, and might be attended with serious consequences to the well-being of the Commonwealth? The Government, through the Attorney-General, advised the House of Representatives not to insist upon taking out this word "seditious," and now they ask us not to insist on its retention. I hope that honorable senators will determine this matter according to their own good judgment and common sense. If they do so I believe they will insist upon retaining this word, and adhering to their previous decision.

Question - That the committee do not insist on the amendment - put. The committee divided -

Ayes14

Noes 14

Question so resolved in the negative.

Senator DRAKE

- The next amendment of the Senate to which the House of Representatives has disagreed requires a little explanation. It will be noticed that two amendments in the clause were rendered necessary by the omission of the words "seditious blasphemous," in the other House. The Senate proposed to re-insert the word "seditious," but in order to make the sub-clause read grammatically, it became necessary to insert the words "if such issue contains," before that word. The two amendments hang together. If our amendment to which the other House objects is insisted upon, then of course we insist upon the consequential and grammatical amendment. I feel myself obliged to ask the committee not to insist on the amendments. I regret the result of the division on the lost amendment, because I think it is calculated to hamper the passage of the Bill. Perhaps I should have explained before, that the Bill has made three passages backwards and forwards, and that according to our standing orders our power of dealing with the matter by means of messages will be exhausted on this occasion. If we insist upon disagreeing with the other House, it will be necessary to ask for a conference. I think that the importance of getting the Bill into operation is so very great that it far transcends--

Senator Major Gould

- Any matter of principle?

Senator DRAKE

- No, not any matter of principle. The honorable and learned senator was not present when I pointed out that the other House has made a very great concession in regard to very important amendments. In seven instances we disagreed with their very important amendments, and they have given way to us, and insisted practically on only one amendment,

Senator Major Gould

- There is one very memorable case in which we assented to one of their amendments, although we originally held a very strong opinion about the employment of black labour on mail boats.

Senator DRAKE

- That was one out of 104 amendments, which the other House made in the Bill. Seeing that there are only two points of difference between the Houses, we might very well have given away. I do not think it is a concession of principle.

Senator Harney

- It is a trifling matter.

Senator DRAKE

- I would not speak of either matter as being unimportant, but in comparison with uniform regulations, and the Rating Bill, these are matters of comparatively slight importance. I move -

That the committee do not insist on the amendments in sub-clause (3) of clause 27, inserting the word " seditious," and agree to the amendment transferring to stand before "seditious," the words "if such issue contains."

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Senator Major Gould

- I ask, sir, whether it is in order for Senator Drake to go behind the decision of the committee on these particular words?

The CHAIRMAN

- Sub-clause (1), as now amended, provides that -

The Postmaster-General may remove from the register any publication a posted copy of which contains seditious, indecent, or obscene matter.

We have now come to sub-clause (3), which, dealing with a different matter, says -

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

I think that the amendment is quite in order.

Senator Major GOULD

- I accept your ruling, sir, , but I would point out that we are asked to undo by a side-wind, what we did at an earlier hour. It is perfectly certain that had the committee not insisted upon retaining the word " seditious " in the first part of the clause, it would willingly have accepted this amendment as being consequential. I ask the representatives of the Government whether it is fair, having ascertained the opinion of honorable senators, to attempt now to get the decision of the Senate reversed. Some honorable members who voted previously may now be absent. There were 28 votes recorded, and the probability is that if another division is taken there will be fewer votes recorded. If the same senators are present I have no doubt that the division will be precisely the same as the last one, because the principle is exactly the same. I can not conceive that any honorable senator would be prepared to stultify himself by voting in one way at half-past six o'clock and in another way at 8 o'clock. We are asked to stultify the decision we arrived at this evening, and to make the clause absolutely inconsistent. The Senate has to be guided by its own sense of what is right and what is wrong. We have had this question under discussion on four or five occasions, and we have invariably come to the one conclusion. Is it consonant with the dignity of the Senate or with the representatives of the Government that they should say - " We disapproved of the decision given, but we may by a chance vote reverse it and make the clause inconsistent." Is it reasonable to adopt a course like that? I submit that it is not. The Postmaster-General has said that the other House have conceded a great many points to us.

Senator Drake

- They did, most generously.

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Senator Major GOULD

- I will assume that they did so most generously. Take the usual course which is pursued in relation to Bills. We sent a Bill to the other Chamber; they sent it back to us with amendments ; we accepted some of those amendments. Whether we accepted them wisely or not, we did accept them. That showed that we were willing to consider any of the points which they thought important. But, having given way as to the words " blasphemous," another place wants us to give way as to "seditious." The matter was regarded by the committee as a matter of principle, and not as one of no consequence. Why should it be regarded as unreasonable for us to stand by our own principles in this matter 1 I am quite certain that a number of honorable senators who voted for the retention of the word " seditious " before the dinner hour believed

that the whole question had been settled on that division. Is it fair, therefore, that on the chance of one or two senators being absent through a misapprehension of what the Government would do, the Postmaster-General should go behind their backs and say, "" Now that these senators have gone we are going to try to induce the committee to reverse the decision that has been arrived at"? In other words the Government ask the committee to say that a thing which is black at half-past six is white at eight o'clock. The Postmaster-General may say that this is a matter for a conference between the two Houses, as we have determined one way and the other Chamber has come to a different conclusion. But if we consent to the amendment it will simply show that the committee does not know its own mind, and that the conference will be a means of ascertaining what the mind of the committee really is. I will ask those honorable senators who voted with the Government before half-past six, out of respect to the Senate, to vote in the opposite direction now. I regret that the Government feel justified in adopting this course. I should have preferred to see them respect the decision of the committee. They should not take advantage of a mere chance vote at an hour in the evening when many honorable senators did not know that such a division was about to be taken. If the Postmaster-General had intimated earlier that the Government intended to divide on the subsequent amendments, and those honorable senators to whom I refer had left, it would be their own look out ; but was it conceived for a moment that the division taken at half-past six was other than a bona fide division to settle the whole question? I have heard members of the Government themselves, when defeated in this Chamber, say - " We look upon this matter as being settled, and any amendment consequential - on what- has been done shall be made." That is a fair way to treat the committee, but it is not fair to those honorable senators who may have been under the misapprehension that the Government would abide by the decision given earlier, that the Government should now seek to reverse that vote.

Senator PEARCE

- I do not know why the Government should be asked to study the wishes of the fourteen honorable senators who voted for the retention of the word " seditious," rather than the wishes of those who voted for its elimination. Those who were in favour of the amendment made by the House of Representatives are entitled to just as much consideration as those who voted against the acceptance of the amendment, especially considering that those who voted against the amendment were not a majority. Had there been a full House I feel sure that the majority would have been in favour of the amendment of the House of Representatives. I think it can also be said that the question now before the Chair is not on all fours with that on which the committee previously voted. If honorable senators will turn to the Bill they will find that the question we dealt with before the dinner adjournment was that of removing from the register newspapers containing seditious, blasphemous, indecent, or ' obscene matter. But this is a question whether the Postmaster-General shall have power to refuse to transmit such newspapers. Under subclause 4, the question is whether the postal authorities will have power to destroy them. It has been urged in favour of this provision that the newspaper proprietor has power to appeal to a Judge. But if the circulation of his paper is stopped, and the copies of the issue have been destroyed, the matter is already judged so far as his property is concerned. Therefore, the question now raised is a different one than whether the Postmaster-General shall have power to remove the name from the register, because that action in itself does not inflict any irreparable injury, inasmuch as the proprietor can proceed to get an injunction to have his name registered. In any case, his property is not destroyed, and the circulation of his paper is not interfered with. Therefore, it can fairly be said that this provision, raises a different question to that raised in the preceding sub-clause. The fact that some honorable senators who voted in the previous division are now absent is one for which no blame can be laid upon the shoulders of the Government. It is the business of honorable senators to be here to deal with matters as they arise. I hope that the Postmaster-General will insist upon this amendment, if only in justice to those who supported the Government on the previous question.

Vice-President of the Executive Council

Senator O'CONNOR

. - I can well understand the anxiety of Senator Gould for the dignity of the Senate and the conduct of the Government, because that honorable and learned senator has no desire to see this measure carried. It is of no moment to him.

Senator Major Gould

- Is it in order, Mr. Chairman, for Senator O'Connor to impute an improper motive to me 1

The CHAIRMAN

- It is not necessarily an improper motive that is suggested.

Senator O'CONNOR

- I did not intend to impute any improper motive.

Senator Major Gould

- I am satisfied with that explanation.

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Senator O'CONNOR

- Yet let the committee make no mistake about what I mean. It is this - that it is no particular concern of the honorable and learned member to see this Bill carried. We have spent months upon this legislation. It is legislation for which the whole Commonwealth is waiting, and we have got so far with it that the matter upon which we are now engaged and the question to follow are the only things which stand in the way of the completion of the measure. I can quite understand that Senator Gould is a member of the party that has no particular desire to see this legislation carried out, or to see the legislation carried by this Senate up to the present time passed into law. I suppose that is party politics. I do not know that I am out of order in imputing to the honorable and learned senator that he is a strong party man. I am only calling attention to it to show the value of the arguments of the honorable and learned senator about the position of the Government and the consistency of the committee. The honorable and learned senator wants to make it impossible for this Bill to become law without inconvenience, and wishes to embarrass the Government in any way he can.

Senator Major Gould

- That is absolutely incorrect.

Senator O'CONNOR

- I will leave the committee to judge of the correctness of that statement. I hope the committee will not allow the passing of the measure to be frustrated by what is a party move on the part of the honorable and learned senator. I have no hesitation in saying that although this particular amendment involves probably the same question as the amendment dealt with previously, the last division was taken at a time when honorable senators did not thoroughly realize the position in which the question stands. I am quite certain that many honorable senators who voted in that division would have recorded their votes differently if they had realized the true position. At all events the subject is of such importance in regard to the carrying of this measure that I feel justified in asking the committee to reconsider it. It is not a mere matter of whether this or that is or is not inconsistent. The position of the Government is that we shall fight this question on every occasion when we can possibly do so. We shall fight it now and upon the next amendment, and I hope we shall be successful in reversing the decision which the committee have already come to, and which, I fear, was arrived at without really proper consideration as to the consequences which that vote involved. What is it we are talking about? I could well understand that, if it were a matter of vital importance to the administration of the measure, we might insist upon the clause as it left the Senate being retained so far as this particular provision in it is concerned. But what does it amount to? We have given over to the administrators of this postal measure a large number of powers. Amongst them we have given them the power which involves a decision by one man, an official, of a question which it is exceedingly difficult to decide. That is, whether a particular statement is or is not seditious. I am free to admit that there are many statements about which there can be no doubt whatever, and which the Government ought not to allow to be disseminated through the post. On the other hand, there are great many statements and exhortations to action which may be highly disapproved of by the Government of the day, but which are not seditious. What more dangerous weapon could we put into the hands of the Government of the day than the power to stop, through the post-office, the publication of some particular doctrine? Then the newspaper proprietor has an appeal to the court, which, however, cannot be expected to decide the question on the grounds of principle, but will simply look at it from the point of view of the hard-and-fast, cast-iron rule laid down by Judges in the definition of what is seditious. We are, therefore, face to face with the question of whether, after all, it is a wise thing to hand over that power to any one man. I can understand that power being given in regard to publications that are obscene or indecent. That is a matter of judgment not involving political feeling or party considerations.

But the publication as to which the question of sedition is raised may be one which simply contains a condemnation of particular views. Therefore, I have no hesitation in saying that, although this is a Government measure, I feel quite satisfied on a consideration of the matter that the inclusion of a clause of this kind in a Postal Bill is a mistake. Do not we all know that in the history of the empire, in the history of England, and of Ireland, and of Scotland, there are numerous cases of men having been arrested and imprisoned for making speeches which would be within the ordinary rule of political controversy at the present day.

Senator Glassey

-Far stronger speeches are delivered to-day.

Senator O'CONNOR

- Undoubtedly. The fact is that public opinion is moving always in the direction of freedom of speech.

Senator Clemons

- Licence.

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Senator O'CONNOR

- Licence may be an abusive epithet, but that does not help us to settle the question. What one person might call licence, another would call liberty. I am speaking of the substance of the matter - I do not care what we call it - and the tendency is to give more perfect freedom of speech. Where freedom of speech is such that it obviously outrages the system of government itself, there are abundant opportunities for bringing the culprit to justice through the ordinary process of the law. This proposal does not take away the right to prosecute for seditious libel, nor to deal with an offender in any way which the criminal law will permit. The person so charged may be brought before the court, and have his case tried in a proper way, with a jury to decide whether he has been guilty of sedition or not. This puts the power of appeal ultimately, however, in the hands of a Judge, who has to decide as a naked question of law whether the particular publication is seditious or not.

Senator Harney

- At the risk of the Government. If the Government take action upon an article which is not seditious they are not justified by this Bill in doing so.

Senator O'CONNOR

- But we must have a definition of what is seditious. If there was an appeal to a Judge, the only question which he could decide would be whether the matter complained of was seditious within the meaning of the law. Senator Harney frankly admitted a little while ago that the law as to what is sedition has been laid down consistently. If the Judge decided that the matter brought before him was seditious, there would be no remedy whatever against the stopping of the publication, because the Postal Bill goes on to say that the decision of the Judge shall be final. I do not care about quoting law books, as a general rule, but the whole matter turns upon the question of what is seditious, in the sense of the way in which a Judge would be called upon to determine it. I should like to quote now from a great authority - Stephen's Digest of the Criminal Law. It gives a definition of what is a seditious intention, and it is a definition which would be acted upon by any Judge who was called upon to decide the matter -

A seditious intention is an intention to bring into hatred or contempt, or to excite disaffection against the person of Her Majesty, her heirs or successors, or the Government and Constitution of the United Kingdom, as by law established, or either House of Parliament, or the administration of justice, or to excite Her Majesty's subjects to attempt, otherwise than by lawful means, the alteration of any matter in Church or State by law established, or to raise discontent or disaffection amongst Her Majesty's subjects, or to promote feelings of ill-will and hostility between different classes of such subjects.

An intention to show that Her Majesty has been misled or mistaken in her measures, or to point out errors or defects in the Government or Constitution as by law established, with a view to their reformation, or to excite Her Majesty's subjects to attempt by lawful means the alteration of any matter in Church or State by law established, or to point out, in order to their removal, matters which are producing, or have a tendency to produce, feelings of hatred and ill will between classes of Her Majesty's subjects, is not a seditious intention.

What can be gathered from that 1 The substance of the first portion of the definition is that it is seditious to have an intention -

To bring into hatred or contempt or to excite disaffection against the person of Her Majesty, her heirs or successors or the Government and Constitution of the United Kingdom as by law established, or either House of Parliament, or the administration of justice.

I have no hesitation in saying that if some person should be so rash as to publish in a newspaper the opinion that the time had arrived when party Government should be brought to an end, or that we should have a president elected here and some resort to the American system, no one would suppose that the foundations of society were in danger of being subverted. Yet a Judge would be bound to hold that such a statement was seditious, and, if a Postmaster-General, acting upon that view of the law, were to stop the publication, that stoppage would be adhered to. I ask the committee whether, considering the nature of the proposal which was made here - considering how out of touch it is with every tendency of thought and feeling upon the question of freedom of speech - it is right or wise in any circumstances for us to insist upon retaining that word in the Bill. Adherence to this amendment might necessitate a conference with the other House at a time when every moment is valuable. There is another aspect to which we are entitled to call the attention, of the committee. It is true we might have a conference with the other House, but that would mean the interruption of business in both places.

Senator Sir Frederick Sargood

- For a couple of hours.

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Senator O'CONNOR

- It is all very well to say that, but it would be an entirely new procedure, so far as the Federal Parliament is concerned. It would involve constitutional questions as to procedure and practice, and all simply because the Senate insisted upon retaining something which ought not to have been in the Bill originally. It is one of those things which may be copied from Bill to Bill, going back to times when the powers of Government and freedom of speech were very different to what they are now.

Senator Clemons

- Yet it was proposed by the Government.

Senator O'CONNOR

- What of that? The Government are not infallible. They may make mistakes which other people may make. I think that if I had been speaking to the matter originally I should have said that it went too far. We are dealing with the position as it is. I ask the committee to remember that they are likely to miss the fruits of the long labour which they have devoted to this Bill, and to throw back this very necessary legislation. In any event, the proceedings would be protracted if the committee adhered to its determination. I ask the committee to assent to my honorable and learned colleague's proposition, and to take steps to make the Bill law in the shortest time possible.

Senator HARNEY

- The observations which have just been addressed to the Senate would have had a good deal of force, perhaps, if they had been used when this matter was first discussed this afternoon. I take it that we will try to give some sacredness to our own decisions. Senator Pearce has said that this case is different from the one with which we dealt this afternoon. Personally, I thought at first that this should have been a consequential amendment. I see now that it is a different case, but different only in being very much stronger. What we decided this afternoon was that the Postmaster-General should be at liberty to remove from the register the name of a newspaper one of whose numbers contained seditious matter. What we are now asked to do is to allow the number which we decided this afternoon should incapacitate further issue of the whole paper, to be itself disseminated. There may, perhaps, be senators present now who did not vote on the last division, but whatever their opinions may be, I would ask whether they are prepared to allow a Bill to leave the Senate which provides that an article containing certain matter is to destroy further publication of the whole newspaper, but, nevertheless, that that article itself is to be freely published. That is what Senator O'Connor seriously asks us to do. Senator Pearce said there were fourteen to fourteen on the last division, and he asked why should the opinion of one fourteen be regarded as more important than that of the other? My answer is that it is so by virtue of the Constitution which says that where the numbers are equal in certain circumstances, the vote shall go in a certain way. It was by a reference to that rule of the Constitution that those who favoured the retention of this word succeeded. Therefore they are entitled to the preference if we are to have any regard for the Constitution

under which we work. The Vice-President of the Executive Council has entered once more into the argument on its merits, and I wish to reply to one or two remarks which he made. He said that this measure was one of vital importance.

Senator Drake

- The honorable and learned senator said the passage of the Bill was of vital importance.

Senator HARNEY

- Very good. The insertion of these words, he said, hazarded the passage of the Bill, therefore their omission was a matter of vital importance.

Senator Drake

- He did not say that.

Senator HARNEY

- But it follows. If it is a matter of vital importance I want to know whether this Senate is to eat its own words in order to please the House of Representatives ?

Senator Drake

- That is not a fair way of putting it, because the presence or absence of the words is not of vital importance.

Senator HARNEY

- Where does the vital importance come in? Is there an apprehension that the inclusion of these words will hit upon publications in the future ?

Senator Drake

- The two Houses must be in agreement to pass the Bill.

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Senator HARNEY

-The honorable senator told us that probably these words were copied from some previous Act. I am quite sure they were, because the words "seditious," "blasphemous," "obscene," and " indecent " are always used together as exhaustive of the offences which papers can commit. Why should we in this case depart from the ordinary rule, and adopt words which are not exhaustive ? It has been said that this will give the Postmaster-General a monstrous power, but by sub-clause (5) there is an appeal to a Judge. If there was no appeal there would be some force in the argument which has been used, because it might be said that sedition was a matter which could only be fairly ascertained by a judicial inquiry. We have the judicial inquiry provided for in this case, and the proprietors of newspapers will, therefore, not be dependent on any haphazard decision which a Postmaster-General may give. It has been said that this is a dangerous power because political opinions differ and Governments are always changing, but I am unable to see any connexion between politics and sedition. Sedition is creating disaffection or discontent by some unlawful means, entirely irrespective of whether a free-trade or a protectionist Government is in power. No one could put this view more strongly than did the Vice-President of the Executive Council when the measure was introduced. But it has pleased the Government in another House to entirely forget the Senate, and for certain political purposes to allow the elimination of this word. They wish to force upon us the conclusion they have come to on account of political exigencies, and they justify the course they have taken by the most flimsy arguments I have ever heard put forward by any person priding himself upon logical reasoning.

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Senator McGREGOR

- I may be dull of comprehension, but I see a great deal of difference in the position the Senate is in now and that in which it was previously. Previously the penalty for what was interpreted as sedition by Heaven knows who - for no one can tell who the Postmaster-General or his deputy might be - was the removal of the publication from the register. The object of a newspaper being registered at all was that it might be carried at newspaper rates. Is there not a vast difference that, when a paper is removed from the register under the amendment we have carried here, yet it may be carried under this amendment at a higher postal rate ? That is where the difference comes in. I am not arguing in favour of any difference, but on the principle that it is an evil thing to put it into the power of any one or two individuals to determine what is or is not sedition. No one knows better than Senator Harney that it is very nearly time that this combination, to which he has referred so repeatedly, should be done away with altogether. Not only the

country to which the honorable and learned senator belongs, but the country also to which I belong, has had many martyrs to the term we are discussing to-night, and yet to-day they are considered to be patriots. I am getting a little light, however. I was getting it when this party reference was made by Senator Harney. I know how Senators Harney and Clemons and myself fought for the exclusion of the clause dealing with Tattersall's sweeps. Is this a back-door attempt to destroy the Bill that is going against our inclinations in that direction? Is this the result of the fine weather and the win the public had on Cup Day at Flemington? I would like to ask Senator Sargood and other honorable senators who were so strenuous in their resistance to Tattersall's sweeps, and so economical in the direction of saving the postage of Victoria, whether they are going to be parties to destroy the Post and Telegraph Bill simply because it will prolong the evil they objected to before? Is it for the purpose of defeating the intentions of the Government in that direction that there is such opposition to the Bill now? If so, although I fought honestly and fairly on the former occasion, I am not going to take part in a fight of this description just now. Something was said by Senator Pearce in connexion with the consideration that should be given to majorities or minorities in the Senate. Senator Pearce never for a moment intended to throw any reflection on the Constitution when he referred to the memorable fourteen who voted one way or the other. Senator Harney would like to make it appear that the fourteen who, by the Constitution, got the advantage of the position, should receive more consideration. I do not deny that they should, so far as the Constitution would give it to them, but are the other fourteen not to be considered if their attendance in the Senate is more earnest, and more regular, than that of the fourteen who are so earnest in their advocacy of the Constitution when it suits them. I hope the question will be reasoned fairly, and that party considerations of all kinds will be kept out of the Senate. I hope we shall consider the question from the point of view of having the Post and Telegraph Bill passed as speedily as possible that the people of the Commonwealth may get the advantage of it. While the people of the Commonwealth have power by their laws to deal with those who are seditious or blasphemous or in any way violate the statutes, I do not think the importance attaches to this amendment that Senator Harney would have us believe. I hope the amendment will be agreed to, and that the previous decision will be reversed.

Senator Major GOULD (New South Wales). - The honorable senator who has last spoken is going upon the assumption that in connexion with this amendment a party issue is being raised. If anyone is responsible for an attempt of that kind, it is the Vice-President of the Executive Council, who took occasion a little time ago to state that the opposition to the Government proposal was not *bona fide*, and came from men who were strong party men. The honorable and learned senator alluded to me as being a strong party man. I admit that at once, but so is the honorable and learned senator. I deny, however, that the mere fact of a man being a party man is sufficient to induce him to destroy a Bill that will be of great benefit to the Commonwealth, and which every senator must know ought to be passed as early as possible.

Senator Higgs

- The honorable senator will do anything to discredit the Government.

Senator Major GOULD

- I am not like the honorable senator, who is always finding out bad motives for everybody. Then, we heard Senator O'Connor speaking with great vigour in support of the proposition made by the Government. True, he admitted the fact that the Government introduced the Bill containing these words, and excused himself by saying that the Government were not infallible. If the clause had gone through without question or debate, he might have been in a position to say that the word was retained through pure inadvertence, but it was debated at very considerable length, and no one fought more strongly for it than did the representatives of the Government. Certain words in the clause were omitted here, with a view to insert them in another place, showing that they were considered most carefully at that time. In its original form the clause provided that -

The Deputy Postmaster-General of each State may refuse to transmit or deliver any publication containing seditious blasphemous indecent or obscene matter.

At that time the Government saw no necessity to make a strong stand against their own proposal. In the other House a change was made, and the Senate insisted on the retention of the word "seditious." The Government had an opportunity of pointing out then all these objections; but they only point them out now because they find that the other House insists on the omission of the word, and because they

consider that the Senate is a subservient body, which is prepared to swallow its own words in order to pacify the other House. We have heard honorable senators talk about the necessity of the Senate being a strong House, and adhering to its opinions ; but we are asked gradually to whittle away our expressed opinions on different matters. On one very vital question the Senate backed down in a remarkable manner. In the Senate the representatives of the Government fought for one thing ; but in the other House their colleagues fought against it, and when the Bill was returned to us Ministers here swallowed everything they had previously said. These things show what the policy of the Government is with regard to the Senate. I do feel surprised at honorable senators taking up a position for no other reason than that the other House adopts a certain course. This is not a question in which party politics are involved. No honorable senator will recognise more readily than will the Postmaster-General that honorable senators on all sides did their best to mould the Bill and that they offered no obstruction. It is unreasonable for the representatives of the Government to ask the committee to " jump Jim Crow " again.

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Senator CLEMONS

- I should have liked to hear from Senator O'Connor a more definite statement as to what he intends to do in order to repair the obvious inconsistency which must arise if we keep the word " seditious " in sub-clause (3), after having struck it out of sub-clause (1). If a division were taken to either retain or omit the word, and I found myself in a minority, I should certainly on the next occasion sit with the majority, because I am always prepared to accept loyally the decision of the majority. If Senator O'Connor wants to upset the decision we came to on the last division, it would have been much more desirable if he had made that attempt at once, rather than seek to do something which is utterly inconsistent, and trust to a chance mood of the Senate to repair an inconsistency afterwards. Our desire ought to be to see that our legislation is fairly consistent with itself. It is obvious to every one that if we do what is proposed we shall bring on the Senate - I think deservedly - ridicule. We should not legislate in a way which is inconsistent with our self respect, and unworthy of the Senate. I ask Senator O'Connor to reconsider his position. I do not like the method he is adopting. I understand that he is prepared to recommit the clause, but he might fail in his attempt, and the inconsistency would remain. I should rather that the fight, if necessary, were begun de novo. My only concern is that we should be consistent in our action.

Senator HIGGS

- I have no doubt that legal gentlemen like Senator Harney can show us that the word " seditious " has occupied a place in all Acts of Parliament for many hundred years, but we have to consider the question of practical utility. For some months we have been considering a Bill of 150 clauses. The House of Representatives agreed to about 100 of our amendments, and now, because a majority in that House have found it incumbent upon them to strike out the word "seditious," some honorable senators appear to be prepared either to hang up the Bill for a considerable time, or to bring about a state of tension which is not necessary. I ask Senator Gould if he knows of a single newspaper having been stopped at the Post-office because it contained seditious matter.

Senator Harney

- Where is the harm in leaving in the word 1

Senator HIGGS

- The harm comes from the fact that the other House has insisted on the amendment, and that we have reached the end of our tether.

Senator Harney

- Why does the other House insist on a departure from the usual form ?

Senator HIGGS

- The honorable and learned senator has stated that the Ministry has seen fit to turn a somersault for political reasons. He undoubtedly made this a party question when he used those words. He meant that the Government had found it necessary in order to hold office to placate certain members in another place by accepting their amendment. If there is any party feeling in the matter at all, I imagine that it comes from those honorable senators who are anxious to see a change of Government. The Government have at their disposal a great many lucrative positions, and no doubt these honorable senators think that if they were in office they could fill those positions with a great deal more credit to the country, and probably profit to their friends. I appeal to impartial senators who are anxious to see the business of the

country done, whether,, although they may object to the word, "seditious" being struck out, it is worth while to insist upon its retention on account of the danger which threatens the Bill.

Senator CHARLESTON

- If I had been here when the last division was taken I should have voted with the Government, and practically reversed the vote I gave on a previous occasion, on the ground that I was never very strong in favour of the retention of the word " seditious," but only thought that it might be advisable to give the Minister power to restrict the circulation of certain publications.. The other House agreed to our amendment in one respect, but it refused to go the whole way. We then asked the House to> reconsider its decision, but it has decided that the word, if retained, would be injurious to the working of the Post-office, and might cause a great deal of friction-' and a great deal of loss to newspaper proprietors and others. For these reasons it has not seen its way to accede to our request. There is no great principle involved; in the retention of the word.

Senator Harney

- If no principle is involved, why do they depart from the ordinary form 1

Senator CHARLESTON

- Owing to the broad meaning which might be placed* upon the word by different persons, according to their temper of mind at the time, it was thought advisable at this period, when we boast of freedom of speech, that it should not be retained. I do not think we should gain anything by continuing the struggle any longer. A time may come when we shall have to insist upon certain things in the interest and for the benefit of the States we represent. As this is not particularly a State matter,, and as it is essential in the interest of the Postal department that this Bill should become law, it would be extremely unwise to wreck the measure by insisting upon, the amendment. If we are. determined to be stubborn without any particular cause, another place will be inclined to be stubborn upon other questions ; and I how can we justify our votes before the people by maintaining a sort of pigheadedness which has no reason to be urged in; favour of it?

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Senator DOBSON

- When in the last division I voted against the Government upon this matter, I had not thoroughly considered the position in which the Bill stood. We have no standing orders of our own, and in consequence of the complicated and tedious procedure which has to be gone through if there is to be a conference, it will not be wise to reject the .amendment made by the House of Representatives. If there is a conference it will practically be a dumb conference. We shall have to appoint managers, and a committee to draw up reasons, and they will have to come away without being able to discuss the subject. Then another place may also move for a conference, which will also be a dumb conference ; and not until then can a free conference be held. The principle contained in the word "seditious" is an important one, but as a matter of practical results it is a small j>oint, because the Postmaster-General never seems to be inclined to put such powers into operation. Is it worth our while, therefore, to embarrass the Government and run the risk of the loss of the Bill, by insisting upon the retention of the word " seditious " ? I shall feel inclined to vote on the ground of pure expediency, and to help the Government, which I think wo ought to do in a matter of this kind. I must say, however, that I have been greatly disappointed all through the discussion because when honorable senators have been determined, time after time, to retain the terms of legislation which in practice have been found to be desirable, there has been a strong inclination on the part of other honorable senators in the opposite direction. Personally I am absolutely in favour of the retention of the words, "blasphemous, seditious, indecent, and libellous." So far from thinking that the time has come when we ought to have free speech, free songs, and free everything else of a blasphemous and indecent description, I think that we ought to go in the other direction. I know that newspapers are published which frequently contain matter that is positively seditious and blasphemous. These papers are sent through the post. What is more, there are novels lying on the drawing-room tables of some of our good people in Melbourne - and for the matter of that, in Hobart also - which seem to have been written with the one idea of being indecent, and really are indecent.

Senator Clemons

- Yet the honorable and learned senator is voting for the striking out of this for! on the ground of

expediency !

Senator DOBSON

- It is not so many hours since Senator Clemons determined to hold his tongue on the ground of expediency. I intend, however, to have the courage of my opinions. I should like to give a little illustration of what I think might be called seditious. I was residing in Sydney for 48 hours some few Sundays ago. Finding there were two Sunday newspapers I bought one. I happened to buy Truth. I had not looked at it for many minutes, when I saw some doggerel rhymes about Lord Kitchener and the South African war. The proprietor of that journal, Mr. Norton - a gentleman whom I do not know by sight - had inserted this doggerel under the initials of the Postmaster-General, " J.G.D." These lines positively called Lord Kitchener a butcher, and stated that he was absolutely gloating over the position of the women and children who were dying of measles in the refugee camps. There is one line which alludes to the fact that this " butcher," Lord Kitchener, is congratulating himself upon how well he appears to have succeeded¹, in practically bringing about, wilfully and deliberately, the death of the people by measles.

Senator Clemons

- That is the sort of paper Senator Dobson would allow to go through the post.

Senator DOBSON

- I would not if I could help it. But how often do we find a Postmaster-General who would put such a drastic clause as this into effect? Such provisions are scarcely ever put into force, and! I give that as a sufficient reason why, on ground of expediency, I am going to vote with the Government.

Senator O'KEEFE

- I am going to vote with the Government, not on: the ground of expediency. I am glad, however, that Senator Dobson is looking upon this matter in a wise light in spite of what honorable senators opposite may say. After all, what is this fight about? For the retention of one little word in this Bill, which has now reached the stage when we want it to become law as soon as possible.

Senator Pulsford

- A little word with a big meaning.

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Senator O'KEEFE

- But it is a meaning which has a very wide significance. It may have a different meaning to Senator Pulsford to what it has to myself. Senator Harney said he was afraid that all kinds of party motives have been actuating the Government in another place.

Senator Harney

- Oh, no ! I said that since they had neither logic nor sense they must have party motives.

Senator O'KEEFE

- If the honorable and learned senator had followed the course of the debate in another place he would have known the reason why the Government accepted the amendment there. Fortunately for Australia, there was a large majority of members with more liberal ideas than have hitherto prevailed in the Upper Houses of Australia. I sincerely hope that the motion of the Postmaster-General will be carried, and I again express my thanks to Senator Dobson for having looked at this matter in a sensible light, although he had previously voted against the Government.

Senator PULSFORD

- I desire in two or three words to say that I protest against the remarks made by Senator O'Connor that the object some of us had in objecting to the course proposed by the Government was due to party motives. The whole course of the debate ought to have prevented Senator O'Connor from making a charge like that. It is that remark which has made me look with less regret on the fact that my esteemed free-trade colleague, Senator Charleston, is going to support the Government.

Senator Drake

- What has this to do with free-trade?

Senator PULSFORD

- Nothing at all, and, therefore, it should not be said that this debate has a party complexion. I will read to the committee a few remarks made by Senator Downer on the 10th October.

The CHAIRMAN

- I will ask the honorable senator not to read them.

Senator PULSFORD

- I believe I am quite in order in quoting from Hansard a remark made by Senator Downer during the debate upon this Bill ?

Senator Harney

- I should like to know for my own future information whether an honorable senator is allowed to quote from the debates which take place in this Chamber ?

The CHAIRMAN. - No; Standing Order 133 says -

No member shall read from a printed newspaper or book the report of any speech made in Parliament during the same session.

Senator Major Gould

- That must mean upon any other subject. I think the Chairman will find that an honorable member is perfectly in order in referring to a previous debate upon the same subject matter.

The CHAIRMAN

- Senator Gould is evidently confusing Standing Orders 132 and 133.

Senator Major Gould

- Senator Pulsford was about to quote remarks dealing with the same subject matter.

The CHAIRMAN

- He may allude to Senator Downer's speech, but not read it.

Senator Major Gould

- Take for the sake of argument a speech delivered on the second reading of a Bill. Surely in the course of the debate an honorable senator can refer to and read from a speech made by a previous speaker.

Senator Drake

- He may not read it, but he may allude to it.

Senator Higgs

- I rise to a point of order. I understand that you have given a ruling, and that it has not been challenged in the proper way.

Senator Major Gould

- I object to the Chairman's ruling that a member cannot read from a printed book the report of a speech made in Parliament during the same session upon the question then under consideration.

In House :

Senator BEST

- I beg to report that Senator Pulsford was proceeding to read from Hansard the report of a speech by another senator in connexion with the Bill immediately before the committee. I ruled in the terms of Standing Order 133, that he was not strictly in order in doing so. The rule is -

No member shall read from a printed newspaper or book the report of any speech made in Parliament during the same session.

Senator Gould has taken exception to my ruling.

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The PRESIDENT

- I understand that it is admitted that the honorable senator was about to read an extract from a speech made by another senator on the same Bill during the present session. There are two standing orders dealing with the subject. Standing Order 132, says -

No member shall allude to any debate of the same session, upon a question or Bill not being then under discussion, except by the indulgence of the House for personal explanations.

According to the admission, as I understand it, this was more than an allusion, and was a proposal to read an extract from a speech upon the Bill now under discussion, and

Standing Order 132 therefore does not prevent the proposed reading as the Bill is " now under discussion." We come then to Standing Order 133-

No member shall read from a printed newspaper or book the report of any speech made in Parliament during the same session.

I do not think that refers to Hansard. One of the main objects of Hansard is that members of Parliament should have a proper record of the speeches delivered by other members during the session, and it has always been ruled, not only in the Imperial Parliament, but also in the Parliament from which these

standing orders have been adopted, that all discussions upon a Bill are part of the same discussion. I am therefore of opinion that the senator who proposed to read an extract from Hansard was strictly in order, and that he ought to be permitted to do so.

In committee :

Senator PULSFORD

- On the 10th October, speaking upon tin's very subject, I find that Senator Downer said -

In my opinion, we should adhere to our decision so far as the word "seditious" is concerned. Sedition is a term which is very well known, and there is no possibility of misunderstanding it. In this respect I think the alteration made by the House of Representatives is a distinct weakening of the protection we give to the community. further on, the same honorable senator said -

Sedition is a well-known term, and it means defiance of good order and Government, and is very much the same as conspiracy.

Those are the only extracts I desire to read. The definition of the word "sedition" is so aptly and clearly put by Senator Downer that I think honorable senators will forgive me for troubling them with it.

Senator CLEMONS

- I shall not interpose at any length, but I should like to ask the Vice-President of the Executive Council what he proposes to do in order to secure consistency in this Bill? I should like the honorable and learned senator to say how he proposes to reconcile the decision come to this afternoon with the decision which may be come to now.

Senator O'Connor

- It will be done in the ordinary parliamentary way, and the honorable senator knows what that is as well as I do.

Senator CLEMONS

- The answer does not quite satisfy me. I think it is desirable that we should be consistent, and the honorable and learned senator ought on behalf of the enate to pledge himself to secure consistency in one way or in the other.

Senator DRAKE

- We shall try to do so.

Senator CLEMONS

- But the Government may try to do so only in one direction, in which they will fail. I am anxious that if they fail to secure consistency in the direction they desire, they shall have sufficient respect for the Senate and our powers of legislation to secure consistency even though they cannot have their own way. That is my concern. I am afraid that the Senate may now strike out this word, and may subsequently fail to undo what we did before dinner, and so leave the Bill in a mutilated condition.

Senator O'Connor

- The honorable senator need not be afraid of that.

Senator CLEMONS

- I am afraid of it, and I have risen to say so.

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Senator FRASER

- Do I understand that the members of the Government in the Senate are now anxious that we should reverse the decision we arrived at an hour or two ago? If so they cannot reckon on any support from me. I speak very plainly, and I am pained to have to speak in this way, because I was quite prepared, and have been during the 30 years I have been in public life, to give every Government honest support. But when the Senate arrives at an honest decision, the Government should adhere to it, and I strongly object to any attempt to get an advantage over a vote deliberately and fairly taken, especially when the Government are themselves the fathers of the very clause and of the very language we are now seeking to maintain. Politically speaking it is most reprehensible that the Government should turn its back upon itself in that way.

Question - That the committee do not insist on the amendment - put. The committee divided -

Ayes 13

Noes 11

Majority 2

Question so resolved in the affirmative.

Senator DRAKE

- The next amendment is practically the same as the last, and proposes the omission of the word " seditious " in si subsequent part of the clause. It is not necessary, I think, to say anything in regard to it, seeing that the reasons urged on the last amendment apply with equal force to this. I move - That the committee do not insist on the amendment inserting the word "seditious" in subclause (4) of clause 27.

Senator Major GOULD

- I do not propose to create any debate that can be avoided upon this question. We have already had a division, and I have no reason to assume that there would be any chance through the absence of two or three senators or the presence of two or three others to again jump Jim Crow, and reverse the last decision arrived at. I think we may recognise the victory the Government have gained in the last division, and make them a present so far as debate upon this amendment is concerned. We may, however, have another division to show that there are eleven or twelve men who are consistent, and who stick to their principles.

Question - That the committee do not insist on the amendment - put. The committee divided -

Ayes . . . Noes ...

Majority

12 11

Question so resolved in the affirmative-..

Senator Higgs

- I should like, on a point; of order, to ask whether Senator Harney is entitled to have his vote counted, when it appears that he has paired with another honorable senator.

The CHAIRMAN

- I cannot take any notice of pairs at all.

Senator Harney

- As a matter of personal explanation may I be allowed to say that I had agreed to pair with Senator Dobson, and had written my name in the pair book, but before the vote came off Senator Dobson entered the chamber and ~E considered the pair off. Honorable senators' will recollect that Senator Dobson and myself voted in the last division.

Clause 3 (Interpretation of terms).

Senator DRAKE

- Amendment No. 6 is of a somewhat different character from the others. We disagreed with seven important amendments of the other House, but in this one case it will not give way. It was purely from sentimental reasons that I objected to the amendment. I did not like to see the clause in the Bill, but I can see perfectly clearly that it will not do any harm. I understand that the other House insists upon the provision, because it is considered advisable that in- the case of those States which have legislated on the subject there should be no chance for any confusion as to the correct definition of the words, "indecent or obscene matter." Whatever we may have said in regard to other amendments, no one can contend that there is anything vital in this amendment.

Senator Harney

- It is unnecessary.

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Senator DRAKE

- If the other House thinks that in the interests of certain States it is desirable to have the clause in order to prevent confusion or ambiguity, we may yield to the argument without loss of honour. It is so exceedingly desirable that the Bill should become law at the earliest possible moment that I do not think its progress should be hampered by a consideration of this character. I move - That the committee do not further disagree to the amendment of the House of Representatives in clause 3, denying "indecent or obscene matter."

Senator Major GOULD

- When this amendment came before the committee it was disagreed to on the voices and without debate, no doubt on the ground that honorable senators thought that the Bill had better not be disfigured

by a provision of this character. I recognise that Senator Drake is assenting to the amendment on the ground that the other House considers it necessary, and in some of the other States I am told it has been held necessary to have an interpretation of what is indecent or obscene from the postal stand-point.

Senator Sir FREDERICK SARGOOD

- That clause was passed in a special Act.

Senator Major GOULD

- Under these circumstances, and as I do not regard it as a matter of great principle, it is not intended to oppose the motion.

Motion agreed to.

Resolutions reported.

Motion (by Senator Drake) proposed -

That the report, as far as regards amendment No. 16, be referred back to the committee for reconsideration.

Senator Pulsford

- I desire to ask you, air, whether the report can be referred back without due notice being given?

The PRESIDENT

- The standing order is as follows : -

The resolutions reported from a committee may be agreed to or disagreed to by the House, or agreed to with amendments, recommitted to the committee, or the further consideration thereof postponed.

Senator PULSFORD

- It must be perfectly obvious why I raised the point of order. Under the circumstances of the division which took place to-day, it ought to be the desire of every honorable senator to get a decision about which no doubt can arise. It must be obvious that when snatch divisions have been taken to-night, doubt must arise as to whether the Senate was fairly represented or not. Certain honorable senators left the Chamber at the dinner hour without any knowledge of the matter which had once been voted upon being likely to come up again. If the Government desire to have Any reputation for what is fair and straight they will consent to take this reference to the committee to-morrow afternoon. I ask Senator O'Connor whether he will consent to that course?

Vice-President of the Executive Council

Senator O'CONNOR

. - We have spent a great deal of time in discussing this question. We have arrived at a stage at which, if this motion is carried, as I believe it will be, we shall have practically finished with the Bill. Why should we postpone this matter until to-morrow ? It has been said by Senator Pulsford that there has been a snatch division. There have been three divisions to-night : which was the snatch division ?

Senator Pulsford

- The one in the afternoon.

Senator O'CONNOR

- No doubt the honorable senator would like to have a postponement in order to get a division to suit him.

Senator Pulsford

- One in which everyone could take part.

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Senator O'CONNOR

- AYe shall not consent to anything of the sort, and we hope that the Senate will lose no time in coming to a decision and thereby bring to a close the laborious and very useful work which has occupied its attention so long.

Senator Major GOULD(New South Wales). - It is all very well from the Government's point of view to say that they desire, for the purpose of expedition, to get rid of the matter to-night, but, if they do, it will lie open to honorable senators to cast this reflection upon them - that finding twelve to eleven voters, with the exception of pairs, they think that if notice of this proceeding had been given the decision they desire to see reversed would not be altered. Perhaps from the stand-point of the Government these tactics may be perfectly legitimate, but I ask whether it is a fair position to take up in regard to honorable senators? When notice appears on the business paper that certain work is to be taken in hand the Government cannot be expected to postpone its consideration to suit the convenience of honorable senators whose

business does not permit them to be present. But when it is proposed to take up practically new work, to re-open a question which has been decided, without honorable senators having had previous notice it is treating them very unfairly. It may act well one day from the Government's point of view, but on another day it may act to their detriment because it will always be competent for any honorable senator, when the Government have obtained a victory, and their opponents find that certain of their supporters have gone away to quietly jump their claim and go back into committee, and by means of a snatch vote reverse a decision which had been given after due deliberation. I ask whether it would not be much more honest for the Government to say, "We do not want to carry our views by means of a snatch division. We wish to get the good sense of the committee on the question. A decision was given this afternoon which we want you to reverse, therefore we ask you to come here to-morrow and to give your voice on the question." It is fair and reasonable, even where the division was so close, for the Government not to snatch a vote, but to give honorable senators every opportunity to state what they think is best and to accept the decision of the majority. It is only fair and reasonable that we should not go on with the matter at the present time. The Senate is asked deliberately to go behind its decision, and to say that it made a mistake in the afternoon. The Government know that a majority of honorable senators are not in favour of the course which is being taken, but because the standing order gives them an opportunity of taking a snatch division, they are going to do so. If the Government will agree to take a formal division on the question to-morrow I am satisfied that honorable senators will be content. Will they promise not to take a division until honorable senators have had an opportunity to attend to-morrow ?

Senator O'Connor

- Certainly not.

Senator Major GOULD

- The honorable and learned senator is determined, because he thinks he will succeed in getting this business completed, so that there may be no chance of getting a vote from a majority of the Senate. If he believed that he had the support of a majority of the Senate, he would agree to my suggestion. But the Government see that possibly tomorrow they will not only lose the opportunity of making the change they wish to make, but that the Senate may feel inclined to change what has been done to-night. That is not the way to get a deliberate expression of opinion. It is a double-edged sword which will be used against the Government. They may rest assured that when the opportunity serves it will be used against them. It may be party warfare, but it is distinctly unfair to those honorable senators who are absent, because they did not think there was a possibility of this question coming up for reconsideration to-night. The Government are determined, if possible, to go back upon what the Senate has done. Of course they will say that the opinion of a smaller number is much better than the opinion of a larger number.

Senator Drake

- The numbers were equal in the division.

Senator Major GOULD

- Would it not be much better to get a few more instead of a few less to determine the question ? It is a distinct attempt to catch, by means of a snatch vote, something which Ministers believe they cannot catch by means of a deliberate vote. It is distinctly unfair to honorable senators. It is, however, a two-edged sword that may strike back upon the Government; and while their policy may be successful now, it will neither redound to their credit, nor to the credit of honorable senators who are so far willing to surrender their principles as to give way on this matter.

Senator Lt Col NEILD

- I must express my extreme surprise that the Vice-President of the Executive Council should take advantage of what I regard as an unfortunate standing order amongst those under which we are temporarily working - a standing order which, I venture to say, will not be included amongst the permanent rules of the Senate. This afternoon the committee came to a conclusion, but now an attempt is being made to reverse the decision in the same sitting, and without the knowledge of those honorable senators who have given their votes, and have since been occupied with other matters which have caused their absence from the chamber. Senator Gould has correctly said that if this course is to be pursued, it will be a two-edged sword, which will undoubtedly be used at some time or other to the disadvantage of the Government.

Senator O'Connor

- The honorable senator's sword is always ready !

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Senator Lt Col NEILD

- My honorable and learned friend is perfectly accurate, but this is no joking matter. Some time ago the committee arrived at a deliberate conclusion. At the instance of the other branch of the Legislature we were asked to reconsider our decision. We did so, and resolved that our decision should stand. Now, without notice, the Postmaster-General asks us to reverse that decision which we have twice affirmed. If the Government succeed in obtaining a reversal of the decision under these circumstances, it will be a most unfortunate and undesirable interference with the ordinary course of business as transacted by British Legislatures. If the South Australian Parliament ever acted under such a provision as this I regard it as a most dangerous one, as most undesirable, and as absolutely at variance with the practice of the House of Commons, and of all other Houses of Legislature throughout the wide dominions of Great Britain.

Senator Stewart

- Still, we may improve upon the practice of the House of Commons.

Senator Lt Col NEILD

- Perhaps we are trying to improve backwards, but I do not think that reversing a decision previously arrived at in the same evening is an improvement. It is the reverse. It is a pernicious procedure, and I venture to promise the honorable and learned senator who is responsible for it that his chickens will come home to roost some day, and that he will then find that they are very much in the way.

Motion (by Senator Clemons) negatived -

That the Senate do now adjourn.

Motion (by Senator Pulsford) proposed -

That the debate be now adjourned.

Question put. The Senate divided -

Ayes 9

Noes 16

Majority 7

Question resolved in the negative.

Original question agreed to.

In Committee :

Senator DRAKE

- I move -

That the committee do not insist on the amendment inserting the word "seditious "in sub-clause 1) of clause 27.

The motions that were agreed with regard to these three amendments in one clause were contradictory. It is not necessary to go into details, because we have already heard some honorable senators say that we ought to be bound by the first division that was taken. I am of the contrary opinion. That division was taken just before the dinner hour, and it is quite probable that some honorable senators came in and voted without having heard the discussion. We may claim that if the division had been taken after a fuller discussion, and when honorable senators knew clearly what issues were involved, the decision would have been different. As this is the only matter left between the two Chambers with regard to the Bill, I think that the Senate might very well give way upon the point.

Senator Lt Col Neild

- "Jump Jim Crow !"

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Senator DRAKE

- I do not think it is right to use such an expression, for the reason that on both these matters each House has had its own opinion, and I have no doubt that honorable senators and members of the House of Representatives hold those opinions still. But we recognise that in politics there is such a thing as compromise. Seeing that the Bill cannot pass until both Houses have come to an agreement upon it, we must recognise that in a case like this, where two Houses take up strongly antagonistic positions one or the other must give way. As I pointed out earlier in the afternoon the House of Representatives in

connexion with this Bill have met us with great fairness, and have given way in many matters upon which members of that House held strong convictions. They gave way, not because they surrendered their own views in regard to those matters, but because they recognised that there must be a compromise, and that one House or the other must give way. They had seen before a disposition on the part of the Senate to meet them fairly, and they showed a similar disposition to meet the Senate. I am glad that some members of the Senate were present in the House of Representatives when this Bill was before that House, and they will remember that members of the House of Representatives were not asked "to swallow their convictions" or to "jump Jim Crow" - language of that kind was not used - but they were asked to remember that there was another branch of the legislature which was entitled to be considered. They did that fairly, and though amendment after amendment was brought forward upon which members of the House of Representatives had previously expressed strong opinions, they showed themselves willing to give way in order to meet the Senate. That being so it is right and proper that we should show an equal disposition to meet them.

Senator PULSFORD

- At this period of the evening, when every honorable senator has expressed his opinion by his voice or his vote, there appears to be no object in prolonging the discussion. For my part, while adhering to my opinion as to the propriety of the Government consenting to an adjournment until to-morrow, I intend now to say nothing further but to allow a division to be taken forthwith.

Senator HARNEY

- I wish to state very emphatically that we are now asked to do a most extraordinary thing. There are but 24 senators in the House at present, and they are being asked to reverse a decision that was come to by 28 senators, and they are asked to do so solely because the decision of the 28 senators was not satisfactory to the Government. I have not a great deal of experience of parliamentary work, but I hope I shall have no further experiences of this kind.

Senator CLEMONS

- I cannot allow the occasion to pass without saying a few valedictory words, because probably this is the last opportunity we shall have of discussing this Bill. The Postmaster-General has made a few meek and mild-mannered remarks with regard to the desirability of compromise, of smoothing things over with the other House, and of soothing their feelings or soothing our own. That is not my attitude with regard to this, nor was it the attitude of prominent members of the Government on more than one occasion. I cannot help being reminded of what must be in the recollection of other honorable senators, that in connexion with this Bill we saw one of the most extraordinary exhibitions of the skilful acrobat, that we could ever have expected to see in connexion with any Bill. This is only consistent with what we have seen in connexion with this Bill from start to finish. We have seen what I have no hesitation in saying is a most disgraceful exhibition on the part of the Government.

Senator O'Connor

- Is that in order? The honorable senator has directly charged the Government with a disgraceful exhibition in connexion with this Bill. I am not super-sensitive, I think about matters of this sort, but we should maintain something like a level of fairly decent conduct in the Senate, and no honorable senator ought to be allowed to use expressions of that kind.

The CHAIRMAN

- I think the expression was out of order.

Senator CLEMONS

- If the Vice-President of the Executive Council is not supersensitive

Senator O'Connor

- The Chairman having given a ruling I ask the honorable and learned senator to obey it.

Senator CLEMONS

- I presume that the ordinary method of obeying the ruling of the Chairman in such a case, is the method I am going to adopt of withdrawing the words. They would have been withdrawn earlier if the honorable and learned senator had allowed me to go on. I am surprised to hear the Vice-President of the Executive Council express himself as not being super-sensitive, because I do not think the Senate needed any such expression from the honorable and learned senator. He may not have been guilty of disgraceful conduct in connexion with this Bill, but he will not deny that he has given us throughout the conduct of this Bill

through the Chamber a marvellous exhibition of somersaults. The honorable and learned senator is one of the most skilful acrobats I have seen.

The CHAIRMAN

- I ask the honorable senator to confine himself to the question.

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Senator CLEMONS

- I have said all I desire to say with regard to the exhibitions. I wanted to say these few words as a parting shot as this is the last occasion upon which we can have an opportunity of discussing the Bill. I have risen to express my utter dissatisfaction that we should, after a few short hours, be upsetting what was decided in this Chamber, by a larger meeting of members than we have had during any division that has since taken place. I wish to emphasize the fact that in a small House we are now proposing to reverse a decision which was come to by the largest House we have had for many weeks.

Senator FRASER

- I would ask the Government to postpone this decision until to-morrow, when I think I can promise them that the majority against them will be greater than it was earlier this afternoon. Surely the Government are not anxious to have it said all over the Commonwealth that a decision is arrived at at half-past six in the afternoon in a very full House--

Senator Drake

- Who did not hear the debate.

Senator FRASER

- Honorable senators present heard sufficient of the debate, and if the decision is adjourned until to-morrow we shall have a full House, and there will be a larger majority against the Government proposals. Surely the Government is not going to start the Commonwealth with a reputation for getting the Senate to change its votes every two or three hours ? After the division taken at half-past 6 o'clock I left the Senate with the deliberate intention of not returning, because I was engaged elsewhere. I had no conception that a vote taken at half-post 6 o'clock would be reversed again at half-past 10 o'clock by a smaller number of senators. That is unheard-of, and it is not commendable. The public will not like it. The public like honest votes to be taken, and decisions come to without any snatch victory. It will not redound to the credit of any party, whether Opposition or Government supporters, to maintain their position in that way. I hope that even now the Government will see it to be their high duty to postpone this question till to-morrow. If they can then secure a majority, I shall not ask them to reverse that vote, and I shall even support them in such a case if a snatch vote is attempted to be secured against them. As we have already arrived at an honest decision on the question, it is utterly unconstitutional and unusual to force this question to another division at this late hour.

Senator HIGGS

- I wish to know whether I have not understood Senator Clemons. When the Postmaster-General proposed the second deletion of the word " seditious," Senator Clemons invited an expression of opinion from the Vice-President of the Executive Council as to what the Government proposed to do in order to make the Bill consistent. I think the honorable and learned senator said that if the Government succeeded in getting a majority in connexion with the latter amendments, he would assist them in making the Bill consistent. In that case, I should say that Senator Clemons now proposes to vote with the Government.

Senator Clemons

- By way of personal explanation, I wish to say that I shall certainly adhere to my expressed intention to obtain consistency. The largest division we have had during all the divisions that have taken place upon these amendments was that in which the side on which I sit was represented by fourteen. So far, in all these later divisions, the Government have not been supported by fourteen senators.

Question - That the committee do not insist on the amendment - put. The committee divided -

Ayes.....12

Noes..... 11

Majority 1

Question so resolved in the affirmative.

Resolution reported ; report of committee adopted.

IMMIGRATION RESTRICTION BILL

Second Reading

Senator O'CONNOR

- Vice-President of the Executive Council. I move -

That order of the day No. 2 be an order of the day for Wednesday next.

I fix that date for the consideration of the measure, and I hope that in the meantime good progress will be made with the Public Service Bill, which must be gone on with.

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Senator CLEMONS

- It would be for the convenience of every honorable senator if the Vice-President of the Executive Council would give us an assurance that no matter what progress is made in the meantime with the Public Service Bill, next Wednesday will be- definitely fixed for beginning the consideration of the Immigration Restriction. Bill. *

Senator O'Connor

- I thought I had conveyed that clearly. I fixed the date for the consideration of the Bill, that we might definitely be able to go on with it then.

Senator Major GOULD

- With Senator Clemons, I was doubtful as to whether the taking of this Bill, as proposed by the Government on Wednesday next, would not be contingent upon certain progress being made with the Public . Service Bill. I understand now that no matter what progress is made with the Public Service Bill, the Immigration Restriction Bill will be dealt with on Wednesday next. Honorable senators, seeing the position which the Immigration Restriction Bill has occupied on the business paper on several occasions, have thought it was the intention of the Government to go on with that Bill before the Public Service Bill, more especially in view of the fact that it had been represented that it was a measure of very great importance, which they were determined to push on with as speedily as possible. I think that most honorable senators would have been prepared to go on with the Bill to-morrow, if the Government had been ready to proceed. At any rate, I hope that the order of the day is being postponed till Wednesday next with the intention of proceeding with the second reading.

Question resolved in the affirmative.

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22:41:00

Senate adjourned at 10.41 p.m.