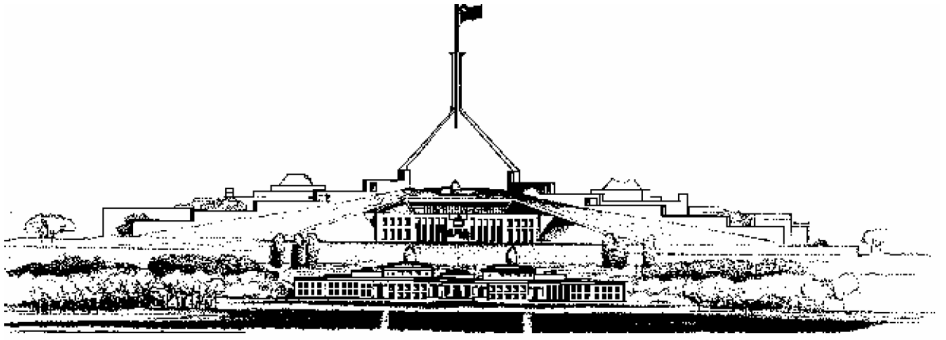
COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



Senate

Official Hansard

No. 28, 1907
Friday, 12 July 1907

THIRD PARLIAMENT
SECOND SESSION

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

PARLIAMENT OF THE COMMONWEALTH.

GOVERNOR-GENERAL.

His Excellency the Right Honorable HENRY STAFFORD, BARON NORTHCOTE, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Knight Grand Commander of the Most Eminent Order of the Indian Empire, Companion of the Most Honorable Order of the Bath, Governor-General and Commander-in-Chief of the Commonwealth of Australia.

DEAKIN ADMINISTRATION.

(*From 5th July*, 1905.)

Minister of External Affairs ...	The Honorable Alfred Deakin.
Treasurer	*The Right Honorable Sir John Forrest, P.C., G.C.M.G.
	Succeeded by
	The Honorable Sir William John Lyne, K.C.M.G. (30th July, 1907).
Minister of Trade and Customs ...	The Honorable Sir William John Lyne, K.C.M.G.,
	Succeeded by
	The Honorable Austin Chapman (30th July, 1907).
Attorney-General	The Honorable Isaac Alfred Isaacs, K.C.,
	Succeeded by
	The Honorable Littleton Ernest Groom (13th October, 1906).
Minister of Defence	The Honorable Thomas Playford,
	Succeeded by
	The Honorable Thomas Thomson Ewing (24th January, 1907).
Minister of Home Affairs	The Honorable Littleton Ernest Groom,
	Succeeded by
	The Honorable Thomas Thomson Ewing (13th October 1906).
	Succeeded by
	The Honorable John Henry Keating (24th January, 1907).
Postmaster-General	The Honorable Austin Chapman,
	Succeeded by
	The Honorable Samuel Mauger (30th July, 1907).
Vice-President of the Executive Council	The Honorable Thomas Thomson Ewing,
	Succeeded by
	The Honorable John Henry Keating (13th October, 1906),
	Succeeded by
	The Honorable Robert Wallace Best (20th February, 1907)
Honorary Minister	The Honorable James Hume Cook (28th January, 1908).

* Resigned office, 30th July, 1907.

MEMBERS OF THE SENATE.

THIRD PARLIAMENT.—SECOND SESSION.

President—Lieut.-Colonel the Hon. Albert John Gould, V.D.

Chairman of Committees—The Hon. George Foster Pearce.

Best, Hon. Robert Wallace	... Victoria.
Cameron, Lieut.-Colonel the Hon. Cyril St. Clair	... Tasmania.
Chataway, Thomas Drinkwater	... Queensland.
Clemons, Hon. John Singleton	... Tasmania.
Croft, John William	... Western Australia
de Largie, Hon. Hugh	... Western Australia.
[3]Dobson, Hon. Henry	... Tasmania.
Findley, Edward	... Victoria.
Fraser, Hon. Simon	... Victoria.
Givens, Thomas	... Queensland.
Gould, Lieut.-Col., the Hon. Albert John, V.D.	... New South Wales.
Gray, John Proctor...	... New South Wales.
Guthrie, Robert Storrie	... South Australia.
Henderson, George	... Western Australia.
Keating, Hon. John Henry	... Tasmania.
Lynch, Patrick Joseph	... Western Australia.
Macfarlane, Hon. James	... Tasmania.
[3]McColl, Hon. James Hiers	... Victoria.
McGregor, Hon. Gregor	... South Australia.
Millen, Hon. Edward Davis	... New South Wales.
Mulcahy, Hon. Edward	... Tasmania.
Needham, Edward....	... Western Australia.
[3]Neild, Colonel, the Hon. John Cash	... New South Wales.
[4]O'Loghlin, Major the Hon. James Vincent ...	... South Australia.
[1]Pearce, Hon. George Foster	... Western Australia.
Pulsford, Edward	... New South Wales.
Russell, Edward John	... Victoria.
Russell, William	... South Australia.
St. Ledger, Anthony James Joseph	... Queensland.
Sayers, Robert John	... Queensland.
Stewart, Hon. James Charles	... Queensland.
Story, William Harrison	... South Australia.
Symon, Hon. Sir Josiah Henry, K.C.M.G., K.C.	... South Australia.
Trenwith, Hon. William Arthur	... Victoria.
Turley, Henry	... Queensland.
[2]Vardon, Joseph	... South Australia,
Walker, Hon. James Thomas	... New South Wales.

[1] Chairman of Committees.
[2] Election declared void 31st May, 1907. Elected 15th February, 1908.
[3] Temporary Chairman of Committees.
[4] Chosen by State Parliament 11th July, 1907. Choice declared void, 20th December, 1907.

MEMBERS OF THE HOUSE OF REPRESENTATIVES.

THIRD PARLIAMENT.—SECOND SESSION.

Speaker.—The Hon. Sir Frederick William Holder, K.C.M.G.

Chairman of Committees—The Hon. Charles McDonald.

Archer, Edward Walker	Capricornia. (Q.)
Atkinson, Llewelyn	Wilmot. (T.)
Bamford, Hon. Frederick William	Herbert. (Q.)
[3] Batchelor, Hon. Egerton Lee	Boothby. (S.A.)
Bowden, Eric Kendall	Nepean. (N.S.W.)
Brown, Joseph Tilley	Indi. (V.)
Brown, Hon. Thomas	Calare. (N.S.W.)
Carr, Ernest Shoobridge	Macquarie. (N.S.W.)
Catts, James Howard	Cook. (N.S.W.)
Chanter, Hon. John Moore	Riverina. (N.S.W.)
Chapman, Hon. Austin	Eden-Monaro. (N.S.W.)
Cook, Hon. James Newton Haxton Hume	Bourke. (V.)
Cook, Hon. Joseph	Parramatta. (N.S.W.)
Coon, Jabez	Batman. (V.)
Crouch, Hon. Richard Armstrong	Corio. (V.)
Deakin, Hon. Alfred	Ballarat. (V.)
Edwards, Hon. Richard	Oxley. (Q.)
Ewing, Hon. Thomas Thomson	Richmond. (N.S.W.)
Fairbairn, George	Fawkner. (V.)
Fisher, Hon. Andrew	Wide Bay. (Q.)
Forrest, Right Hon. Sir John, P.C., G.C.M.G.	Swan. (W.A.)
Foster, Francis James	New England. (N.S.W.)
[3] Fowler, Hon. James Mackinnon	Perth. (W.A.)
Foxton, Colonel the Hon. Justin Fox Greenlaw, C.M.G.	Brisbane. (Q.)
Frazer, Charles Edward	Kalgoorlie. (W.A.)
Fuller, Hon. George Warburton	Illawarra. (N.S.W.)
Fysh, Hon. Sir Philip Oakley, K.C.M.G.	Denison. (T.)
Glynn, Hon. Patrick McMahon	Angas. (S.A.)
Groom, Hon. Littleton Ernest	Darling Downs. (Q.)
Hall, David Robert	Werriwa. (N.S.W.)
Harper, Hon. Robert	Mernda. (V.)
Hedges, William Noah	Fremantle. (W.A.)
Holder, Hon. Sir Frederick William, K.C.M.G.	Wakefield. (S.A.)
Hughes, Hon. William Morris	West Sydney. (N.S.W.)
Hutchison, James	Hindmarsh. (S.A.)
Irvine, Hans William Henry	Grampians. (V.)
Irvine, Hon. William Hill, K.C.	Flinders. (V.)
Johnson, William Elliot	Lang. (N.S.W.)
Kelly, William Henry	Wentworth. (N.S.W.)
[4] Kingston, Right Hon. Charles Cameron, P.C., K.C.	Adelaide. (S.A.)
Knox, Hon. William	Kooyong. (V.)
Liddell, Frank	Hunter. (N.S.W.)
Livingston, John	Barker. (S.A.)
Lyne, Hon. Sir William John, K.C.M.G.	Hume. (N.S.W.)
Mahon, Hon. Hugh	Coolgardie. (W.A.)
Maloney, William Robert Nuttall	Melbourne. (V.)
Mathews, James	Melbourne Ports. (V.)
Mauger, Hon. Samuel	Maribyrnong. (V.)
[2] McDonald, Hon. Charles	Kennedy. (Q.)
McDougall, John Keith	Wannon. (V.)
McWilliams, William James	Franklin. (T.)
O'Malley, Hon. King	Darwin (T.)
Page, Hon. James	Maranoa. (Q.)
[1] Palmer, Albert Clayton	Echuca. (V.)
Poynton, Hon. Alexander	Grey. (S.A.)
Quick, Hon. Sir John	Bendigo. (V.)
Reid, Right Hon. George Houstoun, P.C., K.C.	East Sydney. (N.S.W.)
[3] Salmon, Hon. Charles Carty	Laanecoorie. (V.)

THIRD PARLIAMENT.—SECOND SESSION—*continued.*

Sampson, Sydney	Wimmera. (V.)
Sinclair, Hugh	Moreton. (Q.)
Smith, Hon. Bruce, K.C.	Parkes. (N.S.W.)
Spence, Hon. William Guthrie	Darling. (N.S.W.)
Storrer, David	Bass. (T.)
Thomas, Hon. Josiah	Barrier. (N.S.W.)
Thomson, Hon. Dugald	North Sydney. (N.S.W.)
Thomson, John	Cowper. (N.S.W.)
Tudor, Hon. Frank Gwynne	Yarra. (V.)
Watkins, Hon. David	Newcastle. (N.S.W.)
Watson, Hon. John Christian	South Sydney. (N.S.W.)
Webster, William	Gwydir. (N.S.W.)
[3]Wilks, Hon. William Henry	Dalley. (N.S.W.)
Willis, Hon. Henry	Robertson. (N.S.W.)
Wilson, John Gratton	Corangamite. (V.)
Wise, George Henry	Gippsland. (V.)
Wynne, Hon. Agar	Balaclava. (V.)

HEADS OF DEPARTMENTS.

Senate.—E. G. Blackmore, C.M.G.; (C. B. Boydell, Acting).

House of Representatives.—C. G. Duffy, C.M.G.

Parliamentary Reporting Staff.—B. H. Friend.

Library.—A. Wadsworth.

Joint House Committee.—G. E. Upward; (G. H. Monahan, Acting).

[1] Election declared void 10th June, 1907. Elected 10th July, 1907. Sworn 16th July, 1907.
[2] Chairman of Committees.
[3] Temporary Chairman of Committees.
[4] Decease reported, 12th May, 1908.

COMMITTEES OF THE SESSION.

SENATE.

STANDING ORDERS COMMITTEE.—The President, the Chairman of Committees, Senator Best, Senator Dobson, Senator Clemons, Senator Guthrie, Senator St. Ledger, Senator Sir J. H. Symon, Senator Trenwith.

LIBRARY COMMITTEE.—The President, Senator Chataway, Senator Keating, Senator Lynch, Senator Stewart, Senator Sir J. H. Symon, Senator Walker.

HOUSE COMMITTEE.—The President, Senator de Largie, Senator McColl, Senator McGregor, Senator Mulcahy, Senator Colonel Neild, Senator Turley.

PRINTING COMMITTEE.—Senator Croft, Senator Findley, Senator Lieut.-Colonel Cameron, Senator Henderson, Senator Macfarlane, Senator Pulsford, Senator Givens.

COMMITTEE OF DISPUTED RETURNS AND QUALIFICATIONS. — Senator de Largie, Senator Dobson, Senator Macfarlane, Senator Colonel Neild, Senator Sir J. H. Symon, Senator Turley, Senator Walker.

PRIVILEGE PROCEDURE.—Senator Colonel Neild, Senator Henderson, Senator Turley, Senator Chataway.

HOUSE OF REPRESENTATIVES.

STANDING ORDERS COMMITTEE.—Mr. Speaker, the Prime Minister, the Chairman of Committees, Mr. Joseph Cook, Mr. Groom, [1]Mr. Kingston, Mr. Watson, Mr. Wilson.

LIBRARY COMMITTEE.—Mr. Speaker, Mr. Glynn, Mr. Harper, Mr. W. H. Irvine, Mr. Knox, Mr. Salmon, Mr. Bruce Smith, Mr. Spence.

HOUSE COMMITTEE.—Mr. Speaker, Mr. Batchelor, Mr. Chanter, Mr. Fisher, Mr. Mahon, Mr. Mauger, Mr. Page, Mr. Dugald Thomson.

PRINTING COMMITTEE.—Mr. Edwards, Mr. Fowler, Mr. Hutchison, Sir John Quick, Mr. Storrer, Mr. Watkins, Mr. Willis.

PRIVILEGE PROCEDURE.—Mr. Bamford, Mr. Fuller, Sir John Quick, Mr. Wise.

[1] Decease reported, 12th May, 1908.

ACTS OF THE SESSION.

ADDITIONAL APPROPRIATION ACT 1905-6 AND 1906-7 (No. 9 of 1908)—

An Act to appropriate further sums for the service of the years ended the thirtieth day of June, One thousand nine hundred and six, and the thirtieth day of June, One thousand nine hundred and seven. [Initiated in House of Representatives by Sir William Lyne, 22nd May, 1908. Assented to 3rd June, 1908.]

ADDITIONAL APPROPRIATION ACT 1907-8 (No. 11 of 1908)—

An Act to grant and apply an additional sum out of the Consolidated Revenue Fund to the service of the year ending the thirtieth day of June, One thousand nine hundred and eight. [Initiated in House of Representatives by Sir William Lyne, 22nd May, 1908. Assented to 3rd June, 1908.]

ADDITIONAL APPROPRIATION (WORKS AND BUILDINGS) ACT 1905-6 AND 1906-7 (No. 10 of 1908)—

An Act to appropriate further sums for the service of the years ended the thirtieth day of June, One thousand nine hundred and six, and the thirtieth day of June, One thousand nine hundred and seven for purposes of Additions, New Works, Buildings, &c. [Initiated in House of Representatives by Sir William Lyne, 22nd May, 1908. Assented to 3rd June, 1908.]

ADDITIONAL APPROPRIATION (WORKS AND BUILDINGS) ACT 1907-8 (No. 12 of 1908)—

An Act to grant and apply an additional sum out of the Consolidated Revenue Fund to the service of the year ending the thirtieth day of June, One thousand nine hundred and eight for the purposes of Additions, New Works, Buildings, &c. [Initiated in House of Representatives by Sir William Lyne, 22nd May, 1908. Assented to 3rd June, 1908.]

APPROPRIATION ACT 1907-8 (No. 6 of 1908)—

An Act to grant and apply a sum out of the Consolidated Revenue Fund to the service of the year ending the thirtieth day of June, One thousand nine hundred and eight, and to appropriate the supplies granted for such year in this session of the Parliament. [Initiated in House of Representatives by Sir William Lyne, 7th April, 1908. Assented to 16th April, 1908.]

APPROPRIATION (WORKS AND BUILDINGS) ACT 1907-8 (No. 6 of 1907)—

An Act to grant and apply a sum out of the Consolidated Revenue Fund to the service of the year ending the thirtieth day of June, One thousand nine hundred and eight, for the purposes of Additions, New Works, Buildings, &c. [Initiated in House of Representatives by Sir William Lyne, 25th September, 1907. Assented to 8th October, 1907.]

AUSTRALIAN INDUSTRIES PRESERVATION ACT 1907 (No. 5 of 1908)—

An Act to amend the Australian Industries Preservation Act 1906. [Initiated in Senate by Senator Best, 3rd October, 1907. Assented to 14th April, 1908.]

BOUNTIES ACT (No. 12 of 1907)—

An Act to provide for the payment of bounties on the production of certain goods. [Initiated in House of Representatives by Mr. Groom, 16th July, 1907. Assented to 28th November, 1907.]

COAST DEFENCE APPROPRIATION ACT (No. 19 of 1908)—

An Act to grant and apply out of the Consolidated Revenue Fund a sum of Two hundred and fifty thousand pounds for Harbor and Coastal Defences. [Initiated in House of Representatives by Sir William Lyne, 4th June, 1908. Assented to 10th June, 1908.]

COMMONWEALTH SALARIES ACT (No. 7 of 1907)—

An Act relating to the Taxation by the States of Salaries and Allowances paid by the Commonwealth. [Initiated in Senate by Senator Best, 5th July, 1907. Assented to 8th October, 1907.]

CONSTITUTION ALTERATION (SENATE ELECTIONS) 1906 (No. 1 of 1907)—

An Act to alter the provisions of the Constitution relating to the Election of Senators. [Initiated in Senate by Senator Keating, 17th August, 1906. Assented to 3rd April, 1907.]

CUSTOMS TARIFF 1908 (No. 7 of 1908)—

An Act relating to Duties of Customs. [Initiated in House of Representatives by Sir William Lyne, 8th August, 1907. Assented to 3rd June, 1908.]

CUSTOMS TARIFF AMENDMENT 1908 (No. 13 of 1908)—

An Act to amend the Customs Tariff 1908. [Initiated in House of Representatives by Sir William Lyne, 2nd June, 1908. Assented to 10th June, 1908.]

DISPUTED ELECTIONS AND QUALIFICATIONS ACT (No. 10 of 1907)—

An Act to amend the Law relating to Parliamentary Elections, and to provide for the Settlement of Questions relating to the Qualifications of Members of the Parliament, and to Vacancies in either House of the Parliament. [Initiated in Senate by Senator Best, 30th October, 1907. Assented to 22nd November, 1907.]

ELECTION EXPENSES REIMBURSEMENT ACT (No. 20 of 1908)—

An Act to grant and apply out of the Consolidated Revenue Fund a sum for the purpose of reimbursing expenses incurred by candidates in connexion with certain elections which have been declared void, and in proceedings in relation thereto. [Initiated in House of Representatives by Sir William Lyne, 5th June, 1908. Assented to 10th June, 1908.]

EXCISE PROCEDURE ACT (No. 1 of 1908)—

An Act relating to procedure on applications for a declaration under the Excise Tariff 1906 (Act No. 16 of 1906). [Initiated in Senate by Senator Keating, 10th October, 1907. Assented to 18th February, 1908.]

EXCISE TARIFF 1908 (No. 8 of 1908)—

An Act relating to Duties of Excise. [Initiated in House of Representatives by Sir William Lyne, 8th August, 1907. Assented to 3rd June, 1908.]

EXCISE TARIFF (STARCH) 1908 (No. 14 of 1908)—

An Act to amend the Excise Tariff 1908. [Initiated in House of Representatives by Sir William Lyne, 2nd June, 1908. Assented to 10th June, 1908.]

INVALID AND OLD-AGE PENSIONS ACT (No. 17 of 1908)—

An Act to provide for the payment of Invalid and Old-age Pensions, and for other purposes. [Initiated in House of Representatives by Mr. Deakin, 2nd June, 1908. Assented to 10th June, 1908.]

JUDICIARY ACT (No. 8 of 1907)—

An Act to amend the Judiciary Act 1903. [Initiated in Senate by Senator Best, 5th July, 1907. Assented to 14th October, 1907.]

KALGOORLIE TO PORT AUGUSTA RAILWAY SURVEY ACT (No. 4 of 1907)—

An Act to authorize the Survey of Route for a Railway to connect Kalgoorlie, in the State of Western Australia, with Port Augusta, in the State of South Australia. [Initiated in House of Representatives by Mr. Groom, 16th July, 1907. Assented to 28th August, 1907.]

OFFICERS COMPENSATION ACT (No. 4 of 1908)—

An Act to provide for compensation to be paid on retirement or on decease of certain officers of the Commonwealth. [Initiated in House of Representatives by Sir William Lyne, 13th December, 1907. Assented to 14th April, 1908.]

OLD-AGE PENSIONS APPROPRIATION ACT (No. 18 of 1908)—

An Act to grant and apply out of the Consolidated Revenue Fund the sum of Seven hundred and fifty thousand pounds for Invalid and Old-age Pensions. [Initiated in House of Representatives by Sir William Lyne, 4th June, 1908. Assented to 10th June, 1908.]

PARLIAMENTARY ALLOWANCES ACT (No. 5 of 1907)—

An Act relating to the Allowance to Members of each House of the Parliament of the Commonwealth. [Initiated in House of Representatives by Sir William Lyne, 14th August, 1907. Assented to 28th August, 1907.]

PARLIAMENTARY PAPERS ACT (No. 16 of 1908)—

An Act relating to the publication of Parliamentary Papers. [Initiated in House of Representatives by Mr. Deakin, 3rd April, 1908. Assented to 10th June, 1908.]

QUARANTINE ACT (No. 3 of 1908)—

An Act relating to Quarantine. [Initiated in House of Representatives by Sir William Lyne, 10th July, 1907. Assented to 30th March, 1908.]

SUPPLY ACT (No. 1) (No. 2 of 1907)—

An Act to grant and apply out of the Consolidated Revenue Fund a sum for the service of the year ending the thirtieth day of June, One thousand nine hundred and eight. [Initiated in House of Representatives by Sir John Forrest, 4th July, 1907. Assented to 5th July, 1907.]

SUPPLY ACT (No. 2) (No. 3 of 1907)—

An Act to grant and apply out of the Consolidated Revenue Fund a sum for the service of the year ending the thirtieth day of June, One thousand nine hundred and eight. [Initiated in House of Representatives by Sir William Lyne, 13th August, 1907. Assented to 15th August, 1907.]

SUPPLY ACT (No. 3) (No. 9 of 1907)—

An Act to grant and apply out of the Consolidated Revenue Fund a sum for the service of the year ending the thirtieth day of June, One thousand nine hundred and eight. [Initiated in House of Representatives by Sir William Lyne, 8th November, 1907. Assented to 14th November, 1907.]

SUPPLY ACT (No. 4) (No. 11 of 1907)—

An Act to grant and apply out of the Consolidated Revenue Fund a sum for the service of the year ending the thirtieth day of June, One thousand nine hundred and eight. [Initiated in House of Representatives by Sir William Lyne, 20th November, 1907. Assented to 23rd November, 1907.]

SUPPLY ACT (No. 5) (No. 2 of 1908)—

An Act to grant and apply out of the Consolidated Revenue Fund a sum for the service of the year ending the thirtieth day of June, One thousand nine hundred and eight. [Initiated in House of Representatives by Sir William Lyne, 11th March, 1908. Assented to 14th March, 1908.]

SUPPLY ACT (No. 1) 1908-9 (No. 21 of 1908)—

An Act to grant and apply out of the Consolidated Revenue Fund a sum for the service of the year ending the thirtieth day of June, One thousand nine hundred and nine. [Initiated in House of Representatives by Sir William Lyne, 5th June, 1908. Assented to 10th June, 1908.]

SURPLUS REVENUE ACT (No. 15 of 1908)—

An Act relating to the payment to the several States of the Surplus Revenue of the Commonwealth. [Initiated in House of Representatives by Sir William Lyne, 13th March, 1908. Assented to 10th June, 1908.]

BILLS OF THE SESSION.

BILLS OF EXCHANGE BILL—

[Initiated in Senate by Senator Keating, 5th July, 1907; lapsed at prorogation.]

COMMERCE (TRADE DESCRIPTIONS) BILL—

[Initiated in House of Representatives by Mr. Austin Chapman, 19th November, 1907; lapsed at prorogation.]

CONCILIATION AND ARBITRATION BILL—

[Initiated in Senate by Senator Needham, 1st November, 1907; lapsed at prorogation.]

CRIMINAL APPEALS BILL—

[Initiated in Senate by Senator Colonel Neild, 4th July, 1907; lapsed at prorogation.]

DEFENCE BILL—

[Initiated in Senate by Senator Dobson, 2nd August, 1907; lapsed at prorogation.]

ELECTORAL (DISPUTED RETURNS) BILL—

[Initiated in House of Representatives by Mr. Chanter, 8th August, 1907; lapsed at prorogation.]

FIRE INSURANCE BILL—

[Initiated in House of Representatives by Mr. Frazer, 25th July, 1907; lapsed at prorogation.]

MANUFACTURES ENCOURAGEMENT BILL—

[Initiated in House of Representatives by Sir William Lyne, 13th November, 1907; lapsed at prorogation.]

MARINE INSURANCE BILL—

[Initiated in House of Representatives by Mr. Groom, 22nd October, 1907; lapsed at prorogation.]

PAPUA. BILL—

[Initiated in House of Representatives by Mr. Deakin, 3rd July, 1907; lapsed at prorogation.]

PARLIAMENTARY WITNESSES BILL—

[Initiated in Senate by Senator Keating, 11th July, 1907; lapsed at prorogation.]

POSTAL RATES BILL—

[Initiated in House of Representatives by Mr. Austin Chapman, 23rd July, 1907; lapsed at prorogation.]

PUBLIC SERVICE (APPEALS) BILL—

[Initiated in House of Representatives by Mr. Hughes, 8th August, 1907; lapsed at prorogation.]

REMUNERATION OF LABOUR DEFINITION BILL—

[Initiated in Senate by Senator Colonel Neild, 17th October, 1907; lapsed at prorogation.]

SEAT OF GOVERNMENT BILL—

[Initiated in House of Representatives by Mr. Groom, 17th July, 1907; lapsed at prorogation.]

NAVIGATION BILL—

[Initiated in Senate by Senator Best, 12th September, 1907; lapsed at prorogation.]

NORFOLK ISLAND BILL—

[Initiated in House of Representatives by Mr. Deakin, 2nd June, 1908; lapsed at prorogation.]

PUBLIC SERVICE BILL—

[Initiated in House of Representatives by Mr. Groom, 2nd June, 1908; lapsed at prorogation.]

SEAMEN'S COMPENSATION BILL—

[Initiated in Senate by Senator Best, 3rd June, 1908; lapsed at prorogation.]

PARLIAMENT CONVENED.

THIRD PARLIAMENT—SECOND SESSION.

Parliament was convened by the following Proclamation :—

(*Gazette No.* 28, 1907.)

PROCLAMATION

"COMMONWEALTH OF AUSTRALIA TO WIT. NORTHCOTE, Governor-General.

By His Excellency the Right Honorable HENRY STAFFORD, BARON NORTHCOTE, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Knight Grand Commander of the Most Eminent Order of the Indian Empire, Companion of the Most Honorable Order of the Bath, Governor-General and Commander-in-Chief of the Commonwealth of Australia.

WHEREAS by the Commonwealth of Australia Constitution Act it is amongst other things enacted that the Governor-General may appoint such times for holding the Sessions of the Parliament as he thinks fit, and also from time to time by Proclamation or otherwise prorogue the Parliament: And whereas on the fifth day of April, One thousand nine hundred and seven, the Parliament was further prorogued until Wednesday, the twelfth day of June, One thousand nine hundred and seven, and it is expedient to further prorogue the said Parliament: Now therefore I, HENRY STAFFORD, BARON NORTHCOTE, the Governor-General aforesaid, in exercise of the power conferred by the said Act, do by this my Proclamation further prorogue the said Parliament until Wednesday, the third day of July, One thousand nine hundred and seven, and I do appoint the said Wednesday, the third day of July, One thousand nine hundred and seven, as the day for the said Parliament to assemble and be holden for the despatch of business. And all Members of the Senate and of the House of Representatives respectively are hereby required to give their attendance accordingly, in the building known as the Houses of Parliament, situate in Spring-street, in the City of Melbourne, at half-past Two in the afternoon, on the said Wednesday, the third day of July, One thousand nine hundred and seven.

Given under my Hand and the Seal of the Commonwealth of Australia aforesaid, this eighteenth day of May, in the year of our Lord One thousand nine hundred and seven, and in the seventh year of His Majesty's reign.

(SEAL OF THE COMMONWEALTH OF AUSTRALIA.)

By His Excellency's Command,

JOHN FORREST.

GOD SAVE THE KING!

CONTENTS

FRIDAY, 12 JULY 1907

CHAMBER

Senate.

Friday, 12 July, 1907.

The PRESIDENT took the chair at 10.30 a.m., and read prayers.

TRUSTS IN AUSTRALIA.

Senator FINDLEY.—I desire to ask the Vice-President of the Executive Council, without notice, whether he has perused in to-day's *Age* an article headed "The Tyrannical Trusts," and, if so, has he noted amongst other things two or three statements which, to my mind, are all important? One statement is that before a Parliamentary Committee, Mr. Elmer Howe, of the United Shoe Machinery Company, gave this evidence—

Since the organization of this company, it has combined the interests of the Goodyear Company, and all the foreign business of the McKay Shoe Machinery Company and the Lasting Machinery Company in Europe, so that while the United Shoe Machinery Company confines its business to the United States and to Australia, it controls the whole of the manufacturing territory in Europe.

Another statement in the same article reads as follows:—

The American Boot Machinery Trust flourishes in Australia undisturbed and unmolested, notwithstanding all the instruments of reform placed at the disposal of the local industry and of the Government by clause 87 of the Patents Act of 1903.

I desire to ask the Minister whether he will cause inquiries to be made as to the correctness of those statements or otherwise, and, if proved correct, whether he will take the earliest opportunity of setting the law in motion in order to chop off some of the tentacles of this world-wide octopus?

Senator BEST.—I have not had an opportunity of reading the article in question, but I shall bring it under the notice of the Minister of Trade and Customs and urge its consideration upon him.

NAVIGATION BILL.

Senator GIVENS.—I desire to ask the Vice-President of the Executive Council, without notice, whether it is the intention of the Government to introduce the proposed Navigation Bill in the Senate, and, if so, at about what date it may be brought in?

Senator BEST.—It is the intention of the Government to introduce the Navigation Bill in the Senate. I should say that within the next three, or, at the most, four weeks, it will be my pleasure to introduce it here.

TELEPHONE RATES.

Senator GUTHRIE.—I desire, *upon notice*, to draw the attention of the Minister representing the Postmaster-General to the letter addressed to the Hon. P. McM. Glynn by the Secretary to the Postmaster-General, published in the *Advertiser* on 11th June, 1907, in which he stated "that it is now possible for subscribers in country districts to obtain telephone services at as low a rate as £2 10s. per annum;" and to ask—

Why this concession has not been granted to suburban and city subscribers?

Senator KEATING.—The answer to the honorable senator's question is as follows:—

The concession of telephone services at as low a rate as £2 10s. per annum has not been granted to suburban and city subscribers because the cost of providing services in cities and suburbs is greater than the cost of providing services in country districts. It is, however, possible for suburban and city subscribers to obtain telephone services at as low a rate as £3 per annum.

Senator GUTHRIE.—Arising out of the answer I desire to ask the Minister to say under what system it may be done?

Senator KEATING.—I have not at hand the regulations, which are rather bulky, but in a very short time I shall furnish the honorable senator with the information.

GOVERNOR-GENERAL'S SPEECH: ADDRESS-IN-REPLY.

Debate resumed from 11th July (*vide* page 404) on motion by Senator Lt.-Col. CAMERON—

That the following Address-in-Reply be agreed to :—

To His Excellency the Governor-General.

MAY IT PLEASE YOUR EXCELLENCY—

We, the Senate of the Commonwealth of Australia, in Parliament assembled, desire to express our loyalty to our Most Gracious Sovereign, and to thank Your Excellency for the Speech which you have been pleased to address to Parliament.

Senator PEARCE (Western Australia) [10.40].—I have listened to all the speeches on this motion, and I think it may be said that they have maintained a high standard of interest. I do not share the belief which is held by some persons that the debate on the Address-in-Reply is a waste of time, especially in a new Parliament.

Senator KEATING.—It never is after a general election.

Senator PEARCE. — Exactly. It is highly desirable that honorable senators should define their position on leading questions, and that any change of position should also be declared at the first opportunity. There is no better opportunity afforded to honorable senators to define their general attitude than at this stage. It is also an opportune time for honorable senators to express the opinions they hold on the work of the representatives of the Commonwealth at the two important Conferences recently held in England. I suppose that we shall have no other opportunity of dealing in general terms with those Conferences, and that is one of the reasons which impel me to speak at the present time, because I believe that on most other questions my opinions are fairly well known. I regard the work done by Mr. Alfred Deakin and Sir William Lyne at the Conferences as work of a very high character indeed. I consider that their speeches in England for the most part did much to assist Australia. I by no means agree with the position that they took up on the question of preferential trade; but, in view of the slanders which had been circulated throughout England —very largely, I am ashamed to say, by Australians—it was a good thing that two gentlemen of such force of character and commanding personality as Mr. Deakin and Sir William Lyne should be in England to tell the truth regarding the six hatters, the *Petriana* myth, and various other matters of that character, whenever the opportunity occurred. The work of the Navigation Conference was, in my opinion, much the more valuable of the two, because it dealt with direct and practicable questions, whereas, perforce, the Imperial Conference dealt very largely with questions which are at present in the air. I venture to say that there is not an honorable senator who regards preferential trade as a practicable question to-day; it cannot be so regarded. It is an academic question.

Senator Col. NEILD.—Does the honorable senator regard it as an impracticable question?

Senator PEARCE.—From the standpoint of the dominant party in the Commonwealth—and that is the Protectionist Party—it is a most impracticable proposal. I do not believe that in Australia there is a protectionist who is willing to give Great Britain that preference in trade which the preferentialists in that country desire.

Senator Col. NEILD.—Then Mr. Deakin must have been beating the air?

Senator PEARCE.—No; the protectionists of Australia are prepared to give to Great Britain what they regard as preferential trade; but that is an entirely different thing from what the Chamberlainites regard as preferential trade from their point of view.

Senator BEST.—Not at all. Mr. Chamberlain recognised that preference could only be given, having due regard to the protection of our industries.

Senator PEARCE.—Yesterday Senator Trenwith—who, I regret, owing to his indisposition, was unable to complete his speech, which, I am sure, would have been interesting—said that we must deal with the general principles; but, at the outset of his speech, he stated that if there are any lines on which preference is desirable, then the principle should be affirmed. In laying down that proposition he negatived his other proposition. Before we can determine whether there are any lines on which preference is desirable we must come

down to details ; we must say in what matters it is desirable ; and that is where we shall meet with a difficulty straight away. Are there any protectionists here who are prepared to say—"We will give the boot manufacturers of Great Britain a preference?" Are there any protectionists, either here or outside, who are prepared to say—"We are willing to allow the boot manufacturers of England to compete on even terms with our boot manufacturers?"

Senator GUTHRIE.—No; but the Navigation Conference gave preference to English ship-owners.

Senator PEARCE.—Presently I shall bring that to a practical issue. Are there any protectionists here who are prepared to say in the matter of iron manufactures or machinery manufactures—"We are willing to allow British manufacturers to compete on even terms in our markets?" Of course, they will not say so, and yet those are the principal lines on which Great Britain desires preference—if she desires it at all. If my honorable friends are not willing to give preference to her machinery manufacturers, her woollen manufacturers, and her clothing manufacturers, then in what cases are they willing to give preference to British manufacturers?

Senator LYNCH.—That will entirely depend upon the degree of preference which they are willing to grant.

Senator PEARCE.—If it is going to be of any value it must be a preference which would give British manufacturers our markets. If, however, it was to be such a preference that they could not sell their goods in competition with Australian goods, then it would be of no value to them.

Senator LYNCH.—There was a preference arrangement fixed up the other day between Germany and the United States.

Senator PEARCE.—Yes, in respect of certain articles which are of no value to Germany.

Senator LYNCH.—It is a preference against the outside world.

Senator PEARCE.—The point is that Germany cannot supply those articles to the United States. I will guarantee that no German manufacturer in Germany would agree to give the United States manufacturers a preference on any article which they could manufacture themselves. That is the whole protectionist position. Senator E. J. Russell yesterday stated it exactly when he said that the imports into this country were estimated at a value of £50,000,000, and that he wanted two-thirds of them absolutely prohibited. It does not matter to the consistent protectionist whether they are English or German goods. If he wants to protect the local manufacturer, he must treat the English and the German manufacturer in the same way. That is the practical difficulty that stares the preferential trader in the face. Preferential trade is, therefore, not a practical question. I come now to another phase of the subject to which I desire to draw the particular attention of the members of my own party. This Chamber has already carried a measure of preferential trade. What has become of it? In the last session of the last Parliament we raised the duties on agricultural machinery and a number of other articles to foreign manufacturers by 10 per cent. above British manufactures. The members of my party insisted that that preferential treatment should be given not only to the British manufacturer, but to the British ship-owner and to white seamen. They have found by bitter experience that the preferential proposals of the present Government stop short at the British manufacturer, and that the Government are not prepared to extend that preference to the British seaman or ship-owner. That is a pretty sweeping charge to make, but subsequent events have proved it up to the hilt. What was the reason why that Bill did not receive the Governor-General's assent? It was reserved for the King's assent on the ground that the preference which we desired to give to British seamen and ship-owners contravened some of the treaties entered into by the British Government with foreign countries. Is it not a fact, which I challenge the members of the Government to deny, that one of those treaties was entered into by Queensland prior to Federation, and could be denounced by the present Government at any time? I refer to the protocol to the present treaty with Japan. Have the Government taken any steps to denounce it? There has not been a word from them. There is published in the Melbourne *Age* this morning a little whisper from the Imperial Conference on this subject. It is headed "The Anti-Preference Treaties. Are they Binding?" It begins thus—

> The British Preference Bill passed by the last Federal Parliament was reserved by the Governor-General for the King's Imperial Ministers' consideration, on the ground that it violated a number of British treaties with foreign powers, said to be binding on Australia. When

the Prime Minister went to England it was announced that he would make representations of an important nature to the British authorities with regard to these treaties. Since his return Mr. Deakin has been silent on the matter, and in none of his speeches or interviews would give information on the subject.

Then here is Mr. Lloyd George's statement of the position—

> It is purely the Australian proposal with regard to British ships and white labour that interferes with treaties, but I gathered from Mr. Deakin's speech that he did not consider that an essential part of his proposals.

Did honorable senators hear that? It means that the party who stand for preferential trade in this country, and put it in the forefront of their political programme, do not consider it an essential part of their proposals to extend the same preferential treatment to white seamen and British ship-owners.

Senator FINDLEY.—That is only Mr. Lloyd George's statement.

Senator PEARCE.—Mr. Deakin was present, and did not contradict it. Here is what Mr. Deakin said in reply—

> Not to that particular proposal, but I regard it as important to have our relations to all treaties determined; and I wish to submit the considerations which have led my colleague, the Attorney-General, to contend that we are not at present bound by any of the treaties referred to.

Senator FINDLEY.—They are not referring to our white seamen proposal.

Senator PEARCE.—The whole discussion was about the Bill passed in the last Federal Parliament to extend the preferential treatment to white seamen and British ships. The treaties which interfered with the carrying out of that Bill are twelve in number, and nine of them could be denounced, so far as they relate to this particular subject, at any time by the Imperial Government. They only need to be denounced so far as they apply to our trade. The United States, when they took over the Philippines and Porto Rico, met the self-same difficulty, and overcame it by declaring that their trade with the Philippines and Porto Rico was coastal trade, thus placing it completely outside the scope of any of the treaties affecting it. I have information that the late Right Honorable R. J. Seddon approached Mr. Deakin and urged him to make joint representations to the Imperial Government to have the trade between the Colonies and the Home country declared to be coastal trade. I have asked a question to elicit from the Government what part they played in those negotiations, but, so far as I have heard, Mr. Deakin did not press the question at the late Imperial Conference, when he had a most favorable opportunity for pressing it, and when it was the proper time to press it. He has accomplished nothing in this regard, so far as we can gather from all the statements he has made of what he did at the Conference. I ask my honorable friends in the Labour Party to bear in mind, before giving their adhesion to the proposal for preferential trade as put forward by the Deakin Government, the fact that, so far as Mr. Deakin has made any statement on the subject, the Government are in favour of preferential trade to the British manufacturer without preferential treatment for white seamen or British ship-owners. So far as the Government are concerned, those British goods can be brought here in foreign ships, manned by lascar or coolie crews.

Senator GIVENS.—Preferential trade is dead now.

Senator PEARCE.—I think it is.

Senator GIVENS.—We cannot force preferential trade on people who do not want it.

Senator PEARCE.—But we should be honest to ourselves before we find fault with the British people. We should say what we are prepared to offer them. The British Government and the British people were very wise in refusing their assent to a principle until they knew all its details. It is entirely a business proposition, and in dealing with business propositions men are not content with general principles. In this case they want to know what is in the Bill, and in whose interests the Bill is introduced. My voice and vote in this Parliament will be used to tell the British people "We have nothing to offer you, and our protective barrier is to be raised against you in the same way as it is to be raised against the German or American manufacturer." The British worker should not be faced with the position of having the statements of his compatriots in Australia used by his opponents in Great Britain for his undoing. We may disagree with the attitude taken up by the British Labour Party, we may think they are wrong, but it would be very strange if we in Australia possessed more wisdom and knew better what was right for Great Britain than all the able men who have been elected as members of the great Labour Party in the British House of Commons. As a

member of the Australian Labour Party I heartily sympathize with the attitude the British Labour Party have adopted, and I shall do nothing by voice or vote to make their task more difficult for them in their Parliament.

Senator LYNCH.—We have never presumed to teach them.

Senator PEARCE.—To state that Australia intends to offer Great Britain anything tangible in the way of preferential trade is to mislead them.

Senator STEWART.—Is it not possible for Great Britain to give us preference, even if we can give her nothing in return?

Senator PEARCE.—The only preference Great Britain could give us of any value would be to put a tax on foreign wheat, wool, wine, or other articles of that character.

Senator STEWART.—Or meat, or butter. Would it not be an advantage to Britain to have her food supplies produced in her own Colonies, and not by foreign countries?

Senator PEARCE.—One argument that I know will appeal to Senator Stewart with greater force than to many other honorable senators, is the fact that under the present land system in England anything that will shut out the foreign competition of wheat means so much more for the landlord. It means an increase of rents to the landlord, but it means absolutely nothing for the farmer, because in 99 cases out of 100 he is a tenant farmer.

Senator GIVENS.—There is no reason why the landlord should always be allowed to flourish there.

Senator PEARCE.—I quite agree with the honorable senator, but we must remember that even to-day the landlord lives and flourishes in Australia, in spite of the efforts of the Australian Labour Party, just as he does in Great Britain, in spite of the efforts of the British Labour Party.

Senator GIVENS.—I hope that will not always be so.

Senator PEARCE.—Our experience in the late election taught us that we are not yet able to cope with the local landlord, so that we have enough to do here without attempting to teach the people of Great Britain anything on that subject. We are told in the Governor-General's speech that—

> The Reports of the Royal Commission upon the Tariff already forwarded are under review.

That is something to be thankful for; but very few honorable senators will wade through those reports.

Senator GUTHRIE.—Why?

Senator PEARCE.—If the honorable senator had seen them he would not need to ask why. It is unmistakable that Australia has declared with no uncertain voice for an increased protective Tariff. Honorable senators know that if I had the choice of a really free-trade Tariff, I would vote for it, because they have learnt my inclinations in that direction in the past.

Senator W. RUSSELL.— Would the honorable senator go for the single tax to make up the revenue?

Senator PEARCE.—I would not. I would get the revenue by land taxation, probate and succession duties, and Customs and Excise duties on such articles as liquor and tobacco. I have, however, no choice of a really free-trade Tariff. Honorable senators opposite would not help me to get such a Tariff.

Senator WALKER.—I am not so sure of that.

Senator PEARCE.—Honorable senators opposite are in favour of a Tariff which will produce a revenue of £9,000,000 per annum.

Senator WALKER.—I have never been in favour of such a high Tariff.

Senator PEARCE.—There is no honorable senator opposite who would support a Tariff that would bring in less revenue than the present one.

Senator GUTHRIE.—And at no price will they support a land tax.

Senator PEARCE.—Their object is to stave off a land tax.

Senator MACFARLANE.—We must have revenue.

Senator PEARCE.—That is so, and the attitude of honorable senators opposite shows that they are not free-traders. Consequently, I find myself in this Chamber on this question without any party support at all.

Senator GIVENS.—Splendid isolation!

Senator PEARCE.—Yes, it may be called splendid isolation. But what am I to do under the circumstances? My Tariff opinions have always been secondary to my fiscal opinions. I use the word "fiscal" there as including all taxation. The Tariff is only one part of the fiscal question. I put the question of direct taxation far before the question of Tariff taxation for this reason. Tariff taxation is only financial in its operation, whereas direct taxation has

two operations; it is financial, and it is economic. The taxation of land values would not only bring in revenue, but would also have an effect upon the labour market, would open up a demand for labour, and would open up the land for those who want to use it.

Senator STEWART.—Tariff taxation has an economic effect also.

Senator PEARCE.—Yes, it operates beyond its revenue-producing effects; that is to say, when the Tariff has such an effect that it prevents importation, it has an economic effect in stimulating industry.

Senator MACFARLANE.—By raising prices.

Senator PEARCE.—It must raise prices, or it would not stimulate industry. Now, I am in this position. We have appealed to the people of Australia to give us, in the Federal Parliament, a majority in favour of direct taxation. We have failed to get that majority. How am I to achieve the object I am working for? Here is a party which will oppose the Tariff proposals of the Government, but which will not do anything to alter the present Tariff except in the direction of increasing the volume of revenue derived from it. Can I support that party? By that means I should be continuing the present condition. On the other hand there is a protectionist party which would so raise duties as to prevent imports, and would therefore kill revenue. By so doing it would compel the States Governments—compel every State Government in Australia, in my opinion—to impose direct taxation. If the present Government is genuine in its protestations—if it is really going to bring in a protectionist Tariff—every State Government in Australia will have to impose direct taxation; and it is on that account that, subject to one qualification, which I will explain later, I shall vote for a prohibitive Tariff rather than for a revenue Tariff, for the purpose of compelling the States Governments to do what the people of Australia have not given us authority in the Federal Parliament to do directly. I am all the more free to say this because, at the last election, I never on any occasion pledged myself to a protectionist Tariff, subject to one qualification, and that was, that I told the people of Western Australia that if the party with which I was associated would agree to submit the Tariff as passed this session to a referendum of the electors—the amended Tariff remaining operative during the interregnum—I would vote for every item in the Tariff, and if the electors confirmed it at the next general election, I would vote for its continuance on the statute-book; but if, on the other hand, the electors negatived it after two and a half years' experience, I would be prepared to give effect to their will by going back to the present Tariff. Subject to that qualification, I am absolutely free to vote as I like, unhampered by any pledge to my constituents. The only pledge that I have made, therefore, is that if the party with which I am associated will support me in endeavouring to get the amended Tariff referred to the people, I pledge myself to give my vote to increase present duties; but if I cannot obtain what I desire in that respect I am free. Holding the conviction that direct taxation would bring about greater prosperity than high protection, still, I admit that I would rather have prohibition than the present revenue Tariff, which means that the largest burden of taxation is placed on the shoulders of those people who can least afford to bear it.

Senator WALKER.—I suppose the honorable senator knows that we have direct taxation in some of the States now?

Senator PEARCE.—It is very light, and is probably of a decreasing character; because I notice that since the States have found themselves in a position to pay their way honestly, there has arisen a strong agitation to knock off the income tax.

Senator ST. LEDGER.—There are sixteen forms of direct taxation in Queensland now.

Senator PEARCE. — Not taxation through the State Government.

Senator ST. LEDGER.—Mostly through the municipalities; but still, the burden is on the land all the same.

Senator PEARCE.—Now, I have a word or two to say as to the proposals of the Government with regard to bounties. I trust that, remembering their unfortunate experience in the last Parliament, when the Government again bring forward bounty proposals, they will furnish Parliament with all the information at their disposal. We have a right to ask that the fullest information shall be furnished to us; and I warn Ministers that I do not intend to vote in the dark on any such question. I want to know on what grounds the Government intend to bring forward their proposals; I want to know what reason they have for supposing that, in consequence of the granting of bounties, any particular industry is likely to succeed. I also think that the time has arrived

when, if the Federal Government and the Federal Parliament are genuine in their belief in the policy of a White Australia, another industry, that has hitherto been looked upon as the coloured man's perquisite, should be treated in the same way as the sugar industry has been treated. I allude to the pearl shelling industry, which in the past has been given over to the coloured man. It is time that industry was brought under the influence of a bounty in order that the coloured man might be deported gradually, and that by-and-by it might become a white man's industry. I believe from what I have heard that a bounty would enable that result to be brought about.

Senator GIVENS.—It was a white man's industry in Torres Straits at one time.

Senator PEARCE.—I believe it was. Even if the output of the industry becomes lessened as a consequence of the deportation of the coloured man, it would be far better to have half the present number of people engaged in it, and those all white people resident in the Commonwealth, than have it exploited by coloured men who are really a source of danger, menace, and evil to Australia.

Senator GIVENS.—It would be a good job if, in the interest of the industry itself, the pearling grounds were shut up for ten years.

Senator PEARCE.—That may be so. As to the financial relationships between the Commonwealth and the States, the references in the Governor-General's speech are vague and non-committal. In that respect, however, they are indicative of the helplessness which the Federal Government has displayed from the beginning in dealing with this question in a tangible fashion. Why should we wait upon the decision of the State Premiers' Conference? Certain definite powers were embodied in the Constitution, to be exercised by this Parliament. Surely we have as much knowledge of the financial needs of the Commonwealth as the State Premiers have. Surely we have as much authority to deal with the question as they have—indeed, we have more. Why should the Federal Treasurer be continually dancing attendance upon these State Treasurers, who change their *personnel* and their opinions almost every time their Conference meets, and who are only united by the one bond of anti-Federalism? With the exceptions of Mr. Price and Mr. Peake, who did occasionally put in a word for the Federation, it seems to me that the Conference in Brisbane simply resulted in one long screech against the Federal authorities. And then, as if to cap the whole farce, and make the proceedings doubly ridiculous, the Premiers appointed a man at £300 a year to watch the proceedings of the Federal Government and Parliament, and to report if we venture to overstep the mark! Although the amount paid is but small, this action of the Conference can only be stigmatised as a disgraceful waste of public money. Yet these people are always howling against Federal extravagance! A High Court has been established to safeguard the rights of the States, and to prevent the Commonwealth from overstepping its authority. Yet, on the top of that, these Premiers—including Mr. Evans, the man who is always wailing about the poverty of Tasmania, and saying that his State cannot afford another penny piece because of the injustice that it has suffered—voted for this appointment of a man at £300 a year to revise the doings of the Federal Parliament. If the taxpayers do not take the matter in hand it is high time they should. Personally, I intend to treat the resolutions arrived at by the Conference with absolute indifference. As regards the linking up of old-age pensions with the financial relationships, I agree most cordially with Senator de Largie and Senator Henderson. I do not intend to go over the same ground which they have traversed.

Senator DE LARGIE.—Did the honorable senator read what the *Age* and *Argus* reported?

Senator PEARCE.—It is, of course, of no use to refer to the newspapers to find out what the honorable senators said. With regard to the defence question—I am sorry that Senator Cameron is not present—the mover of the Address-in-Reply took the opportunity of showing his enthusiasm. But although that is boundless, it must be admitted that he gave the Senate no practical proposals as to how he would provide for the expenditure that he advocates on defence materiel. He outlined a scheme of additional expenditure amounting to £800,000, ignoring the fact that the Commonwealth has only £300,000 per annum left to play with. He was also careful to say that he would vote against any proposal for direct taxation. The difficulty with regard

to Australian defence is that nearly every senator has some pet scheme of his own, but that they do not indicate where the money is to come from to pay for it. I agree with those who say that the time has arrived when we should get out of the agreement to pay £200,000 a year to the British Admiralty. I opposed that scheme when the Bill was before us, and am glad to see that the Government, and certainly public opinion, have come into line with my way of thinking.

Senator WALKER.—Not in New South Wales.

Senator PEARCE.—I believe that the same is the case in New South Wales also, with the possible exception of Sydney, where, I suppose, a certain number of people think it would be advantageous to have £200,000 spent every year in their harbor.

Senator GRAY.—Some of the members of the Ministry seem to throw doubt on what the honorable senator assumes to be its policy.

Senator PEARCE.—Well, I think that the Prime Minister made his position very clear in England. If he had no intention to revoke the Naval Agreement, why did he seek to induce the Admiralty to agree to that course being taken?

Senator ST. LEDGER.—There was always power to terminate it.

Senator PEARCE.—No, the honorable senator is wrong. It could not be terminated until after a certain number of years' notice.

Senator ST. LEDGER.—Except for that.

Senator PEARCE.—It was provided that the agreement should run for ten years, and that two years' notice of termination should be given to the Admiralty. The Prime Minister, in inducing the Admiralty to agree to terminate it, must have had something in his mind. The only thing that could have been in his mind was the possibility of terminating the agreement at an early date. I think the time has arrived when we should commence with a navy of our own, and I venture to say that a great deal of the expenditure now devoted to military purposes could with advantage be spent on naval affairs. In every part of Australia there are a large number of youths who, under our new cadet scheme, are going to be trained for military purposes. Why should not the Government, instead of training them as military cadets, train them as naval cadets?

Senator WALKER.—I think that that is being done in some cases already.

Senator PEARCE.—It is in a few instances.

Senator DE LARGIE.—It is easier to get guns than ships for the boys.

Senator PEARCE.—But there are in the eastern States facilities for training the boys as naval cadets. There are gunboats in Brisbane, and other vessels available in Adelaide, Melbourne, and Sydney. The *Protector*, for instance, could be used for the purpose. I am satisfied that for about the same money as we now pay, these boys could be trained as naval cadets with almost as much ease as they are now trained for the drill sheds ashore. I agree with those who say that any immigration proposal must be preceded by proposals to deal with the land monopoly in Australia. In this connexion, I should like to give the Senate an amusing, and, at the same time, an interesting experience which came under my notice during the recent dispute in the timber trade in Western Australia. There was involved in that dispute a number of Norwegians, and we ascertained from papers in the possession of these men that they had been brought to Western Australia through the State Agent-General, but, on the initiative of the Timber Combine, Millar Brothers Company. These men possessed newspapers in the Norwegian language, containing leading articles which had had the effect of inducing them to come to Australia. They were country newspapers, and in every one of them there appeared a large advertisement by Millar Brothers Company calling for immigrants. The leading article followed the advertisement in every one of these newspapers, and, singular to say, the same article, word for word, appeared in each. Another important point in connexion with the matter, which I commend to Senator St. Ledger, is that one of the strongest arguments used to induce these men to come to Australia, was that in Australia the labour unions were dominant—that they held the chief political power to such an extent that the States' Governments and the Federal Government were practically working-men's Governments, and, that being so, the laws were all made for the protection of working-men. It was suggested that on that account, Norwegians, if they decided to leave their own country, could not immigrate to a better place than Australia, because in this country the working-man did as he liked.

Senator ST. LEDGER.—That does not affect my argument.

Senator PEARCE.—Some of the men who constitute the Timber Combine in Western Australia, are amongst the bitterest opponents of the Labour Party in that State; but when they go to a foreign country to induce working-men to come to Australia they use as their trump card and principal inducement the statement that in Australia political power is in the hands of the working-men, that working-men are in the Australian Parliament, and our laws are dictated by the labour unions.

Senator ST. LEDGER.—Nobody denies that.

Senator TURLEY.—Lying comes easy to them.

Senator PEARCE.—It shows that when advertising in a foreign country they hold different views of the Labour Party to those to which they give expression in Australia. To explain the way in which this immigration scheme is worked, I may say that these men were engaged in London by the Agent-General for Western Australia, and though they were not brought to Western Australia under contract, they were met on landing by a Government agent, who took them straight to the Labour Bureau. When they got there, an official of the Timber Combine was awaiting them, and, as their names were entered in the books of the bureau, he ticked them off, and then took them down to the timber mills. I wish to add that, to the credit of these men, when the trouble occurred they were loyal to their mates and stood together with them as well as any of the Britishers or Australians. Not a man of them played the part the combine wished them to play, and they all stood out to the last. In my opinion it is a crime to overstock the labour market while understocking the land market. Until something is done to counteract the land monopoly and break up the big estates, to bring people into the labour market is merely to reduce the wages and lower the standard of living of workers in Australia. I recognise the danger of an empty Australia, and especially of an empty North Australia; but I recognise also the danger of an over-stocked labour market. We can have foes within as well as without, and any one who lowers the wage rate and the standard of living in Australia aims as great a blow at our national life as would the invader who came to our gates and bombarded our ports. Dealing with the mail contract, while it is of no use to repeat past history, I should like to ask what the Government are doing to avoid similar catastrophes in the future? On this occasion I wish to turn a somersault, and I should like to do it as easily as possible. I was one of those who always contended that the Government should entirely separate mail contracts from contracts for purposes other than the carriage of mails. Our experience in connexion with the last contract has caused me to alter my views on that subject. That experience, if it teaches us anything, should teach us that the two things should be linked together. If they are not, we may expect in the future a recurrence of what took place in connexion with the last contract. A company will secure a contract from the Federal Government for the carriage of mails, under which we shall pay from £150,000 to £200,000 per annum, and will then immediately go to the States Governments with a lever to extort more of the taxpayers' money.

Senator ST. LEDGER.—The honorable senator's leader, Mr. Watson, approved of the last position.

Senator PEARCE.—I do not care whether he did or not.

Senator DE LARGIE.—The States Governments refused the request, and told the Commonwealth Government to mind its own business.

Senator PEARCE.—I see that Mr. Swinburne admits that in connexion with the previous contract the States Governments were approached by the Federal Government, and absolutely ignored the Federal request. But I believe the States Governments will have learnt a lesson by their experience, and I strongly urge the Federal Government to approach them in connexion with the next contract that is proposed.

Senator DE LARGIE.—To be told again to mind their own business?

Senator PEARCE.—I do not think they would be told that. I believe that the States Governments have learnt a lesson from the experience of the last contract. We have to put aside the foolish notion that the people of the States and of the Commonwealth are two different sets of people. They represent the one set of taxpayers. If we can arrange for a line of steamers to carry our mails, and also our produce, why should we not make the one

bargain for these services, and learn what we must pay for the whole business?

Senator GRAY.—Does the honorable senator mean that we should specify the freight charges for a number of years?

Senator PEARCE.—I do. I think we should specify what the freights should be, and should also stipulate that the company getting the contract should not join any shipping ring. The Commonwealth Government is the only authority in Australia that can effectively deal with such a question. The great danger of the six States Governments attempting to deal with the matter is that a shipping company would be able to play off one State against the other. They could play off Victoria against New South Wales, as I believe was done in connexion with the last contract we tried to make. If the Federal Government would endeavour to make a contract for the carriage of mails, and also for the carriage of perishable produce, stipulating the rates of freight and conditions under which the produce should be carried, I believe the Australian taxpayers would have less to pay, and the Australian producer would get a better deal.

Senator MCGREGOR.—Why should we not run our own vessels?

Senator DE LARGIE.—That is the only way in which we can fight the shipping ring.

Senator PEARCE.—I believe it is the only way in which we can secure effective reform in this matter, but the trouble is that we cannot get all that we desire. I do not believe there is a majority in the Federal Parliament prepared to go that far, and we, therefore, must be satisfied with the next best thing. It is not now a question of condemning the Government for what has occurred, but of insisting that the Government shall learn the lessons which their experience in connexion with the last contract should teach them.

Senator GRAY. — Would the honorable senator approve of the payment of a higher rate of freight than that at present ruling, on the assumption that freights are likely to rise in the future?

Senator PEARCE.—No, but I say that if the Government could secure a contract that would be satisfactory as a mail contract, and could make at the same time satisfactory provision for the carriage of perishable produce at regular intervals from Australia to England, preventing the company undertaking the contract from getting into the hands of the shipping ring, I should be prepared to vote for an increase on the subsidy at present paid, and I believe it would be good business to do so. In taking up that position, I feel that I am logically compelled to come to the conclusion which Queensland senators emphasized in the last Parliament, and have again referred to this session, that the steamers engaged in carrying out such a contract should call at Brisbane. It would not be logical to make a contract securing facilities for Australian trade, and omit as ports of call any of the principal ports of the Commonwealth. I should like to direct the attention of honorable senators to clause 6 of the conditions of tender for the proposed new contract. I think that it is very loosely drawn. It reads—

> Tenderers may tender in the name of an agent without disclosing the name of the principal—

Senator WALKER.—I think that is outrageous.

Senator PEARCE.—

> but in such a case the agent shall state in the tender that he is the agent of an undisclosed principal. On demand the agent shall disclose the name of the principal, or principals, and no tender will be accepted before the name of the principal has been supplied to the Postmaster-General.

That is inadvisable for two reasons. First of all, because a mere adventurer and syndicate-monger can put in a tender and then, as I believe was done in connexion with the last contract, hawk it round in the hope of making a few thousand pounds out of it. In the next place, such a provision will place at a disadvantage genuine tenderers, who have the necessary vessels and put in a genuine tender which they are prepared to stand by.

Senator KEATING.—The agent can be called upon to disclose the name of his principal.

Senator PEARCE.—Then why allow an agent to tender without giving the name of his principal?

Senator HENDERSON. — To give the boomster a chance.

Senator PEARCE.—That seems to me to be the only object of the clause. What reason can there be for keeping secret the name of the principal? A man who is putting in a *bonâ fide* tender will have no reason for secrecy. In my opinion, the Government should strike out that clause in the conditions of contract, because it is absolutely useless, if not mischievous. I think that our experience in connexion with

the last contract should have shown that such a provision is undesirable.

Senator ST. LEDGER.—It gives the same facilities for mongering the contract.

Senator PEARCE.—It absolutely invites that kind of thing.

Senator GIVENS.—It would seem that only companies that are in the shipping ring are able to tender.

Senator PEARCE.—I know that that has been said, but it remains to be seen whether that is really so. Paragraph 16 of the Governor-General's Speech speaks of the prosperity existing throughout Australia, and I wish, as a member of the Labour Party, to say, that while I agree that there has been recently a period of great prosperity, I can affirm, without fear of successful contradiction, that it has not been shared in by the workers of the Commonwealth. Except in so far that work is not quite so intermittent, and is not so difficult to get as it was some time ago, I venture to say that the workers are not receiving a share of the prosperity. Wages have not increased. Any one who reads the daily press cannot but be struck with the fact that, in the eastern States especially, wages are deplorably low. So far as I can see, every attempt made to increase the wages of the workers and secure for them a little share of the prosperity which they have been largely instrumental in bringing about, is resisted most strenuously. When the miners of Bendigo and Ballarat endeavour to secure shorter hours of work in the deep levels, which, from what I can understand, must resemble the Inferno itself, preparations are made on behalf of the capitalists to defeat their desire.

Senator GRAY.—Are there not Wages Boards here?

Senator PEARCE.—But their operation does not extend to the mining industry.

Senator MACFARLANE.—There is an Arbitration Court.

Senator PEARCE.—There is no Arbitration Court in Victoria. But I would point out that even in States in which there are Wages Boards the work of those bodies is being defeated by what is known as "the reputable employers' clause," which prevents wages from rising above the wage which is paid by the average employer in any industry. In the artificial manures industry in Victoria, the wage fixed by the Wages Board upon appeal to the Supreme Court was only thirty-five shilings per week of fifty-four hours. That is a trade which is directly connected with the industry which has chiefly benefited from the great prosperity resulting from good seasons, viz., the agricultural industry. Yet the artificial manure industry, which has to a large extent contributed to the bountiful harvests which have been reaped, is only permitted to pay a wage of thirty-five shillings per week of fifty-four hours. It seems to me that the problem is a serious and difficult one, and I am not satisfied that the appointment of Wages Boards and Arbitration Courts can solve it. In my opinion they cannot. It seems to me that they merely give the force of law to the existing condition of affairs. As an honorable senator interjects, they merely strike an average. Of course, I recognise that for the most part those laws have been in the hands of unsympathetic administrators. Whether in the hands of sympathetic administration they would accomplish more, I am not prepared to say. But I do believe that we shall have to deal with questions which go nearer to the root of the difficulty than these palliatives can possibly do. The history of producing countries teaches us that, as the means of production under modern conditions become more and more centralized, the power of the capitalist increases, and that of the worker decreases, with the result that the bargain between the two becomes more and more unfair. In this connexion I would remind Senator Findley, who yesterday spoke of the awful poverty which exists in free-trade London, and of the deplorable condition of the workers there, that if he will take the trouble to study a book which has been written by an American, Jacob Rüs, entitled *How the Other Half Lives*, he will learn that an even blacker condition of things obtains in protectionist New York. He will find that the population of that city is cramped to the extent of one thousand to the square acre, as against six hundred in London, that one out of every five persons who die there is buried in a pauper's grave, and that there is an army of unemployed which equals the army existing in free-trade London.

Senator FINDLEY.—I merely pointed out that poverty exists in free-trade countries as well as in protectionist lands.

Senator PEARCE.—In my opinion fiscalism is neither the cause nor the cure of the evils to which both the honorable senator and myself have referred. I notice that the Government propose to once more bring forward the Kalgoorlie to Port Augusta

Railway Survey Bill. and I am encouraged to believe that it will receive more generous treatment than it has done in the past. I am encouraged to think so by the statement of Senator W. Russell that he will not pay any regard to the consideration of what taxation the passing of that Bill might render necessary in his own State. That is the test which I am prepared to apply to questions affecting all the States. In the consideration of the Tariff proposals of the Government, Western Australia has absolutely nothing to hope for. If the present duties were raised one hundred per cent., I do not believe that the effect would be to start a single industry in Western Australia. Some of the existing industries there, notably that of bootmaking, are languishing, not because of foreign competition, but because of Victorian competition. Consequently the representatives of Western Australia in voting upon the Tariff proposals of the Government, will not be voting to establish a single industry in their own State, and will naturally regard those proposals from a national and not a parochial point of view. I need scarcely point out that Victoria has reaped a rich harvest as the result of the operations of the existing Tariff. A reference to this morning's newspapers will show honorable senators that Melbourne has become the great distributor for Australia. In that regard Melbourne has displaced Sydney. To-day's *Age* says—

> As will be seen from the appended statement of duty adjustments, Victoria did, during the year ended 30th June last, nearly three times as much trade with her neighbours in dutiable goods as New South Wales, and had, as a consequence, to pay away to other States £424,829 in duties as against New South Wales' debit of £150,212.

Those figures have reference to the distribution of imported goods. But I think honorable senators will admit that the export of Victorian-made goods to other States has increased four-fold since the establishment of Federation. What a marvellous tribute that is to the beneficent influence of Inter-State free-trade upon Victorian industries! I am sure that there is not an honorable senator who grudges this State one single penny of that increase. We say "Good luck to Victorian industries."

Senator WALKER. — Yet its manufacturers want higher duties imposed.

Senator PEARCE.—That is another question. What I wish to point out is that those who are reaping these benefits should at least pay some attention to the needs of the smaller States which are *footing the Bill*, which have nothing to hope for from Tariff adjustments, but which are interested in other matters for which they ask Australian consideration. So far Queensland has had a fair share of the Federal cake. This year she will receive about £502,000 by way of sugar bounties. I am aware that some honorable senators will say that Queensland herself pays that money. But we know that the existing Tariff has the effect of keeping foreign sugar out of Australia. In other words, the price of that commodity is raised by the existing duty, otherwise the foreign sugar could successfully compete with the Queensland article. The people who consume that sugar contribute that taxation. It is true that an Excise is paid by the grower, but it must be recollected that he secures not only an increased price for his commodity, but—if it be produced exclusively by white labour a very substantial payment as bounty. Looking at the figures which I have quoted, I cannot see that Senator St. Ledger has any good ground for his complaint regarding the treatment which Queensland has received at the hands of the Federal authorities.

Senator ST. LEDGER.—I complained only of injustice to Queensland in respect of the mail contract.

Senator PEARCE.—It will be seen that in regard to one of her industries, at any rate, Queensland is being treated in a strictly just manner. I regret that the crusade which I initiated against the Tobacco Trust will necessarily have to be abated for some time, because—as honorable senators are aware—a proposed alteration of the Constitution can only be constitutionally made during the last session of a Parliament. It seems, therefore, that we are in a *cul de sac*, because until we can amend the Constitution we cannot deal with that trust in an effective manner. To my mind it is a remarkable circumstance that the Australian Industries Preservation Bill, which was brought forward by the present Government with such a flourish of trumpets, has been practically a dead letter so far as Australian trusts are concerned. It is interesting to refer to the following

cable which appears in this morning's *Age*:—

London, 11th July.

The latest development in President Roosevelt's campaign against the great trusts of the United States is his proposal to ask for the appointment of receivers of the Tobacco Trusts and other corporations. The proposal is severely criticised by the American press as being tantamount to the adoption of the principle of Government ownership. The New York correspondent of the *Daily Telegraph* states "The Government asks for an injunction restraining the corporations composing the Tobacco Trust from operating a combination in restraint of trade between States. The Government makes each of the trusts sixty-four subsidiary corporations, co-defendants. The British-American Tobacco Company is also included.

Now, upon page 1911 of the evidence given before the Select Committee appointed by the Senate to inquire into the Tobacco Monopoly (Parliamentary Papers, Vol. 3, session, 1906), Mr. L. P. Jacobs shows that the British-American Tobacco Company is a member of the Australian Trust. I ask honorable senators to weigh the significance of that statement. This trust, which President Roosevelt, who proclaims himself an anti-Socialist, is anxious to prevent from operating in restraint of trade between the States of America, practically owns and controls the tobacco trade of Australia. I ask what have the Government done to prevent that combine from adopting methods in restraint of trade? Is it not a fact that it is as powerful to-day as ever it was, and that no manufacturer in Australia can successfully compete against it? Another instance which was brought forward by Senator Findley had reference to the Boot Machinery Trust. One would imagine that the provisions of the Australian Industries Preservation Bill might very well be put into operation in connexion with these trusts. But nothing whatever has been done. The local branch of the Standard Oil Trust has an agreement with grocers which is similar to the agreements made in the United States, and which is aimed at opposing companies. Then there is the Colonial Sugar Refining Trust. All these trusts are carrying on in defiance of the law, and no action has been taken against them.

Senator ST. LEDGER.—In what respect are they acting in defiance of the law?

Senator PEARCE.—They are acting in restraint of trade. Both of these trusts bind their customers. Both have agreements which are in restraint of trade. I understand that it is the intention of the Government to submit this session a Bill for the appointment of a High Commissioner, and that it is also proposed to erect Commonwealth Buildings in the Strand, London. It is singular that the Ministry, which claims to be so gifted with original ideas, has never the modesty to admit the source of some of its inspirations. As a matter of fact a member of the Labour Party in another place was the first to submit the proposition that the Commonwealth should have, in London, a building of its own. When Mr. King O'Malley made that proposal two years ago in another place, and even went so far as to outline the class of building that he thought we should erect, his remarks were greeted with roars of laughter. To-day, however, the Government actually bring it forward as one which they have originated.

Senator LYNCH.—Did both sides of the House laugh at Mr. King O'Malley when he made the suggestion?

Senator PEARCE.—I understand that both the Government and the Opposition parties greeted the proposal with derision.

Senator MCGREGOR.—All the members of our party are considered by the Opposition to be fools.

Senator PEARCE.—At all events Mr. King O'Malley has the satisfaction of knowing that he laughs well who laughs last, and that his proposal which, when first submitted, was considered impracticable is now after the visit of the Prime Minister to England thought to be one that, if adopted, would be highly advantageous to the Commonwealth. When it was put forward by the Prime Minister it was received with the utmost respect, not only by the Parliament, but by the press. I trust that if we have a High Commissioner an Australian will be selected.

Senator BEST. — Who? Mr. King O'Malley?

Senator PEARCE.—He would make a very good High Commissioner.

Senator WALKER.—Is he an Australian?

Senator PEARCE.—He is a far better Australian, in the truest sense of the term, than are many who were born here.

Senator GRAY.—What does the honorable senator meant by "Australian"?

Senator PEARCE.—I refer to those who are Australian in sentiment, and put Australia first. The gentleman at present acting in London for the Commonwealth is not the man that I should like to see in

office. I do not hesitate to say that Captain Collins' appointment will not bear public scrutiny. Parliament was not consulted, and when he was sent to London it was said that his appointment to represent the Commonwealth there was only a temporary one. We understand now that his office is to be the nucleus of the High Commissioner's Department in London.

Senator GRAY. — Is the post of High Commissioner to be created for the Treasurer?

Senator PEARCE.—I do not know for whom the post is to be created, but Captain Collins would be a worthy secretary to Sir John Forrest. He is not the man that I should like to see appointed as our representative in Great Britain.

Senator WALKER.—Whom does the honorable senator think ought to be High Commissioner?

Senator PEARCE.—The honorable senator himself would be a capable man to act in that capacity. We should at all events find him of great assistance when we proceeded to convert the national debt. I have only to say in conclusion that I shall give a general support to any measures submitted by the Government which, in my opinion, are in the interests of the people.

Question resolved in the affirmative.

PRESENTATION OF THE ADDRESS-IN-REPLY.

Motion (by Senator BEST) agreed to—

That the Address-in-Reply to the Governor-General's opening speech be presented to His Excellency by the President, and such senators as may desire to accompany him.

The PRESIDENT.—When I have ascertained the date on which it will be convenient for His Excellency to receive the Address-in-Reply, I shall communicate with honorable senators.

ADJOURNMENT.

CONDUCT OF BUSINESS.

Senator BEST (Victoria—Vice-President of the Executive Council) [11.51].—I understand that since we have concluded the debate on the Address-in-Reply, there is a general desire on the part of honorable senators that we should adjourn.

Senator GIVENS.—Who said so?

Senator BEST.—I shall not mention any names, but several honorable senators have suggested to me the desirableness of adjourning now, and yielding to that suggestion, I move—

That the Senate do now adjourn.

Senator GIVENS (Queensland) [11.52].—I fail to see why the Government should ask us to adjourn at this early hour, when there is business to be transacted. I believe that I live further from the Seat of Government than does any other member of the Parliament. In order to attend here, I have to leave my wife and family, and neglect my personal interests, and yet I am called upon to loaf three days in the week, while honorable senators are prepared to accept any flimsy excuse for an early adjournment. At the end of the session the Government will allow much business to go by the board on the ground that there is no time to deal with it. Is it not reasonable that we should not sacrifice time at the beginning of the session? So long as we have business to do, and senators willing to deal with it, the Government should not ask us to adjourn, as we are now invited to do, after a sitting extending over less than an hour and a half. It is a matter of indifference to honorable senators from Victoria whether our sessions extend over two or three years, because they have not to leave their homes in order to attend here. Honorable senators from South Australia and New South Wales can also return to their homes every week-end, but I cannot rejoin my family without neglecting my parliamentary duties.

Senator MCGREGOR.—Then why does not the honorable senator resign?

Senator GIVENS.—If I were as selfish as honorable senators from South Australia and New South Wales, who can return to their homes every week, and who wish to loaf when there is work to be done, it would be better for the country if I did resign.

Senator W. RUSSELL.—That statement is unworthy of the honorable senator. I am a representative of South Australia, and would prefer the Senate to sit until 4 o'clock.

Senator GIVENS.—Then the honorable senator will vote against this motion? I appeal to honorable senators to have consideration for those who have throughout the session to remain away from their homes.

Senator WALKER.—If the honorable senator calls for a division, he will probably have some support.

Senator GIVENS.—I never speak for the mere sake of talking, and if any honorable senator will join with me in protesting against this adjournment I shall certainly call for a division. The Governor-General's speech outlined a large volume of business for the session, and if we fritter away our time now, we shall be asked to rush our work towards the close of the session. In addition to this, as I have said, much business will be sacrificed on the score of want of time to deal with it. That course will be adopted again and again unless a stand is made by those who think that when there is business to be done we ought to be prepared to transact it. I am opposed to adjournments on such flimsy excuses as are so often advanced.

Senator McGREGOR (South Australia) [11.56].—In fairness to the Ministry, I must take some of the blame on my own shoulders. It was the intention of the Government, if possible, to bring the debate on the Address-in-Reply to a close last night; but as several honorable senators wished to speak, and we could not conclude at a reasonable hour, I suggested to the Vice-President of the Executive Council that he should agree to adjourn the debate until this morning. Had it been concluded last night, I have no doubt that we should have adjourned over to-day just as another place has done. The Vice-President of the Executive Council told us that he was prepared to move the second reading of two Bills. I understood, however, that the debate on the Address-in-Reply would be continued until the luncheon hour, and that we should then adjourn for the day. Several honorable senators assented to that course. Senator Givens probably was not consulted because he was not in his place at the time the arrangement was made.

Senator W. RUSSELL.—I was present, but heard nothing about the arrangement.

Senator FINDLEY.—Nor was I consulted. All the members of our party could not have been absent at the time.

Senator McGREGOR.—I do not suggest that I was the only one present. I consulted others before proposing last night that we should adjourn at a reasonable hour. Those honorable senators who are so anxious to work should give some intimation of their desire. I make this explanation in fairness to the Government, for I do not wish them or any other section of the Senate to be blamed for anything for which others are partly responsible. I blame honorable senators of my own party for not meeting more frequently than they do, and indicating what they desire. Whenever I do anything every one of them finds fault with me.

Senator LYNCH.—Not every one of them.

Senator McGREGOR.—I hope not. When the members of my party leave everything to me, and I take certain action, I am prepared to accept my share of the responsibility, and do not care whether Senator Givens or any other honorable senator takes exception to what I have done. After what occurred last night I shall certainly support the motion.

Senator FINDLEY (Victoria) [11.59].—I am going to oppose the adjournment, because I consider it unnecessary. It is unfair for Senator McGregor to state that after making an arrangement on behalf of his party some of the members of it find fault with him. An important proposal like that now before us should have been considered by the various members of the party of which the honorable senator is leader. I feel rather keenly on this point, and wish to say that the debate on the motion for the adoption of the Address-in-Reply collapsed sooner than was anticipated. Senator Pearce, who spoke for over an hour, delivered an address which I think every one will admit was highly interesting and instructive, but he concluded sooner than I and others had anticipated. Whilst he was addressing the Senate, I was informed by Senator Stewart that he intended to speak to the motion. The honorable senator, however, left the Chamber for a minute or two, and when he returned found that the debate had closed. Some other honorable senators also intended to speak. I civilly asked Senator McGregor if he would say a few words, so as to allow time for Senator Stewart to return and continue the debate, but Senator McGregor said he did not feel inclined to accede to the request. That, I think, is not the sort of part which a leader should play under such circumstances.

Senator McGREGOR.—May I explain that not being able to see whether Senator Stewart was absent from the Chamber, I expected him to rise and continue the debate.

Senator FINDLEY.—I told Senator McGregor that Senator Stewart was out of the Chamber.

Senator McGREGOR.—But I am not a talking machine, and cannot undertake to speak at any moment. If Senator Stewart

did not desire to lose his opportunity, he should have consulted some honorable senator before he left.

Senator WALKER (New South Wales) [12.0].—If the motion be put to a division, I intend to support Senator Givens. At the same time, I think it is scarcely nice on the part of that honorable senator to suggest that honorable senators from New South Wales are always anxious to secure an early adjournment.

Senator GIVENS.—I referred generally to senators from distant States.

Senator WALKER.—But the New South Wales senators were included in the remark, whereas on Fridays we are always prepared to sit until 4 o'clock, when it becomes absolutely necessary to adjourn in order to catch the Inter-State trains. The Vice-President of the Executive Council expressed his intention to go on with the business.

Senator BEST.—I was anxious to do so; and if I had half-an-hour in which to collect my papers I could go on now.

Senator WALKER.—I was looking forward to having the Minister's speech on the Judiciary Bill available for study between now and the next day of meeting.

Senator GRAY (New South Wales) [12.2].— I think Senator Givens is establishing a bad precedent in opposing the Government on an occasion of this kind. The Government desired to proceed with business, and they took the usual step of consulting the leader of the Labour Party and honorable senators on this side before consenting to an adjournment. This is one of those occasions where courtesy should induce honorable senators to vote for the motion.

Senator MACFARLANE (Tasmania) [12.4].—My inclination is to support Senator Givens, but as the Government have no desire to delay business, I suggest that if we hear the Vice-President of the Executive Council move the second reading of one of the Bills which appear on the notice-paper, we might then, perhaps, adjourn.

Senator BEST (Victoria—Vice-President of the Executive Council) [12.5].—I ought to explain that I did not myself make any suggestion that there should be an adjournment, but was approached on the matter. Under the circumstances, I ask leave to withdraw the motion, with the intention of moving the second reading of the Judiciary Bill.

Motion, by leave, withdrawn.

JUDICIARY BILL.

SECOND READING.

Senator BEST (Victoria—Vice-President of the Executive Council) [12.6].—I move—

That the Bill be now read a second time.

At the outset, I ask permission to discuss together the Judiciary Bill and the Commonwealth Salaries Bill, because it would be very difficult, in dealing with this important subject, to debate one without referring to the other.

The PRESIDENT.—Is it the will of the Senate that the Vice-President of the Executive Council have leave to discuss the Commonwealth Salaries Bill in moving the second reading of the Judiciary Bill, and that honorable senators have extended to them the same privilege?

HONORABLE SENATORS.—Hear, hear.

The PRESIDENT.—Leave is granted. The honorable senator may proceed.

Senator BEST.—The Senate is now called upon to take the responsibility of relieving what is really a most complex situation, and I ask honorable senators to be so kind as to follow me as closely as possible. I speak at somewhat of a disadvantage because, in pursuance of the understanding entered into last night, I have not beside me my full notes; but I am certainly not going to permit it to be said that, through any fault of mine, the Senate is prevented from proceeding with business. Further, I conceive that it would be of some advantage to honorable senators to be able to consider, between now and the next day of meeting, the remarks of the Minister on these two measures. The position is that, if an action is instituted by, say, the Commissioner of Taxes against a Federal servant in a State Court, and the State Court follows the decision of the Privy Council, then it is competent for that officer to appeal to the High Court and be adjudged free from taxation; but if, on the other hand, the State Court follows the judgment of the High Court, it is competent for the Commissioner of Taxes to appeal to the Privy Council, whereupon the officer will be adjudged liable to taxation. This unfortunate, and, indeed, ludicrous position is intolerable; and Parliament has the responsibility of relieving the community with the least possible delay. The question is whether Parliament is content that we should have two final Courts of Appeal of co-ordinate jurisdiction, for the purpose

of interpreting the Constitution, and questions arising under it. I have no difficulty in coming to the conclusion that Parliament will regard the present state of affairs as most undesirable; and it is for Parliament to determine which Court, in the matter referred to, is to be supreme — the Privy Council or the High Court of Australia. Further, as the High Court has been created by ourselves for the purpose of dealing with our own immediate conditions, and in pursuance of the terms of the Constitution itself, Parliament will have no difficulty in deciding that it should be the final arbiter.

Senator GIVENS.—The High Court is the final arbiter already, and the object is to make that more sure.

Senator BEST.—I shall deal with that phase of the matter later on. I invite honorable senators to recall some of the leading Federal principles which actuated the framers of the Constitution. First of all, it was realized that as each of the States had its own written Constitution, it would be necessary to also have a written Constitution for the Commonwealth; and in order to create the Commonwealth, it became necessary to carve out of the Constitutions of the various States certain limited jurisdictions and certain limited powers for the central authority. The principle proceeded upon was that, as the States themselves were confined in their jurisdiction to the limits of their own Territory, and, as it was desirable, in the interests of the whole Commonwealth, that certain subjects of a common character and of national interest should be dealt with by the Federal or central authority, the various States should surrender those common objects to the Commonwealth. By reason of this distribution of powers, between the Commonwealth and the States it was essential, and indeed vital, that some high judicial tribunal should be constituted for the purpose of finally deciding the limits of the jurisdiction as distributed between the Commonwealth and the several States.

Senator LYNCH.—There is no overlapping of jurisdiction now.

Senator BEST.—That is just the point. The question is what are the jurisdiction, rights and powers of the States, and what are the jurisdiction, rights and powers of the Commonwealth?

Senator LYNCH. — This is a usurped power on the part of the States.

Senator BEST.—The High Court having been constituted under those circumstances, it comes as somewhat of a shock that our ideals were not embodied in the Constitution as conclusively as we thought. We find that what we regarded as the High Court, whose duty it was to finally decide on the questions I have indicated, is not the sole and final arbiter; on the contrary, the Privy Council has asserted that it has certain powers, with the result that we have now two final Courts of coordinate jurisdiction to deal with the same subjects. That, as I have said, is an intolerable position, from which we must be relieved without delay. The Privy Council by its recent decision has undermined the powers of, and has to a large extent nullified the law as established by, the High Court, having practically decided that there are two final Courts of Appeal. I submit that we cannot view with equanimity the destruction of finality in connexion with the decisions of the High Court on questions so important as those of a constitutional character. The existence of a final Court of Appeal is vital to the proper working of the Constitution, and to a right distribution of powers between the Commonwealth and the States. We must have a final Court of Appeal to protect the Commonwealth against the States, and the States against the Commonwealth. Mutual non-interference must be aimed at. It was thought that this could best be secured by the setting-up of a peaceful judicial tribunal such as the High Court. That tribunal must be regarded as a particularly competent one, because of the acquaintance and intimate touch of the Justices who compose it with the immediate conditions of Australia, and because of their knowledge of the spirit and intentions of the compact entered into between the Commonwealth and the States. In their early history, the United States of America had the complex problem which we are now facing presented to them. They had to harmonize and define the powers of the States and of the Union. Chief Justice Marshall, when an attempt had been made by one of the States to interfere with Federal instrumentality, laid down the principle that the power to tax is the power to destroy, and that a State tax on the means or instrumentalities of the Federal Government is by necessary implication forbidden by the Constitution, and therefore unconstitutional. That judgment is specially applicable to

the cases which have come before our own High Court. It has had to deal with the same constitutional question in regard to various appeals, of which the first was that of *D'Emden* v. *Pedder*, 1 *Commonwealth Law Reports*, 91. In that case the High Court laid down the principle that—

> The Commonwealth and the States are, with respect to the matters which, under the Constitution, are within the ambit of their respective legislative or executive authority, sovereign States, subject only to the restrictions imposed by the Imperial connexion, and the provisions of the Constitution either expressed or implied.

I emphasize the last two words—

> Where, therefore, the Constitution makes a grant of legislative or executive power to the Commonwealth, the Commonwealth is entitled to exercise that power in absolute freedom, and without any interference or control whatever except that prescribed by the Constitution itself.
>
> If a State attempts to give its legislative or executive authority an operation which, if valid, would fetter, control, or interfere to any, the smallest extent with the free exercise of the legislative or executive power of the Commonwealth, the attempt, unless expressly authorized by the Constitution, is invalid and inoperative.

Senator ST. LEDGER.—Following the American Constitution.

Senator BEST.—Yes. Then came the cases of *Deakin* v. *Webb*, and *Lyne* v. *Webb*, in which the same question was dealt with, though other facts came into consideration. The Court re-affirmed its judgment in *D'Emden* v. *Pedder*. It was held that—

> An Income Tax Act of a State, in so far as it attempts to tax the salaries of officers of the Commonwealth, is within the above principle.

That is, the principle which I have just read.

> The salaries of a Minister of the Crown for the Commonwealth and of a member of the Commonwealth Parliament, so far as they are earned in Victoria, are not liable to assessment under the Income Tax Acts of Victoria. . . . The liability of a Commonwealth officer to an income tax imposed by a State Act in respect to his salary as such officer, is a question as to the limits *inter se* of the constitutional powers of the Commonwealth and those of a State within the meaning of section 74 of the Constitution, and therefore the decision of the High Court as to such liability is final and conclusive, unless the Court certifies that the question is one which ought to be determined by His Majesty in Council.

The effect of these decisions was to protect the Commonwealth powers against encroachments, which it was felt were being made by State legislation. Then came a converse case under the Commonwealth Conciliation and Arbitration Act, that of *The Federated Amalgamated Government Railway and Tramway Service Association* v. *The New South Wales Railway Traffic Employés' Association*. In that case it was felt that the Commonwealth was making certain inroads on the rights and jurisdiction of a State. The case is reported in 4 *Commonwealth Law Reports*, 488. It was held that—

> The rule laid down in *D'Emden* v. *Pedder* . . is reciprocal. It is equally true of attempted interference by the Commonwealth with State instrumentalities. The application of the rule is not limited to taxation. . . . . Section 51 (xxxv.) of the Constitution does not either expressly or by necessary implication authorize such an attempt.

But although it was thought that the tribunal which was established to enforce the doctrine of non-interference on the part of the Commonwealth and the States was to be the final Court of appeal, the startling decision of the Privy Council in *Webb* v. *Outtrim* swept away that idea. With very great respect to the members of the Privy Council who heard that appeal, I say that in dealing with it they did not pay regard to the Federal spirit which prompted the framing of the Constitution. They were content to pick out three or four sections of the Constitution Act, and to deal with them in a strictly dry, legal way, without considering them in connexion with the whole scheme of Federal unity. Their reasoning appears to have proceeded on the lines which I shall attempt to summarize. First, they said that before Federation, the Colony of Victoria had unlimited powers of taxation as to all persons and things within its jurisdiction, and they reasoned that these powers are preserved by sections 106 and 107 of the Constitution, except so far as they may be otherwise limited by it. Section 106 reads as follows:—

> The Constitution of each State of the Commonwealth shall, subject to this Constitution, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be, until altered in accordance with the Constitution of the State.

I draw particular attention to the words "subject to this Constitution." The meaning of that section is that, subject to the provisions and spirit of the Constitution, the States should continue to exercise sovereign jurisdiction in respect to the residuum of powers retained. Then follows section 107—

> Every power of the Parliament of a Colony which has become or becomes a State, shall, unless it is by this Constitution exclusively vested in the Parliament of the Commonwealth

or withdrawn from the Parliament of the State, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be.

In that section I particularly desire to emphasize the words—"unless it is by this Constitution exclusively vested in the Parliament of the Commonwealth or withdrawn from the Parliament of the State." The Privy Council held that the power of the State to tax the incomes of residents who are Federal officers is not expressely taken away by the Constitution, and that there is no room for an implied prohibition of the exercise of that power, adopting the legal maxim *Expressum facit cessare tacitum*—where all the terms are expressed nothing can be implied—which practically amounted to a declaration that no implied powers are conferred by our Constitution. That is the all-important proposition in their judgment, and it seems to me a most unreasonable one. If it is to hold good, it will hamper and fetter the operations of the Commonwealth and of the States to a most serious and alarming extent.

Senator ST. LEDGER.—It seems to me that the judgment of the Privy Council amounts to a declaration by the Privy Council that there are no implied powers given by the Constitution.

Senator BEST.—That is practically what was held in the case of *Webb* v. *Outtrim*. To show how unreasonable the view is, I draw the attention of honorable senators to the wording of section 51 of the Constitution, wherein the framers, taking as their model the Constitution of the United States of America, make the barest references to the subjects in regard to which the Commonwealth has power—

The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to—

The legislative powers of the Commonwealth are then set out in 39 paragraphs, which deal with trade and commerce, taxation, bounties, borrowing money, banking, bankruptcy, and insolvency, trading and financial corporations, marriage, external affairs, the control of railways with respect to transport for naval and military purposes, and so on. In regard to each subject enumerated in the section, volumes could be written, and the duty of developing the subjects is cast upon the High Court. It has to consider for the people of the Commonwealth what the several subjects cover. In regard to a number of the subjects concurrent jurisdiction is allowed to the States. Therefore the High Court has to determine as to the distribution of the legislative powers; in other words, as to which powers are assigned to the States and as to which powers are assigned to the Commonwealth. When I point out that the several subjects are barely named, surely it will be seen that there is a necessary implication that, in order to develop those subjects, there must be implied powers reserved by the Constitution. To us it seems not only inevitable, but most obvious, that that is the true position of affairs. If the Constitution does not imply the prohibition of legislative powers to the States, other than those directly expressed, the scheme of Federation must fail, and that is the serious proposition that we have to face. It means that the States will have it within their competence to fetter and hamper our operations at every turn, that friction will thereby be created, and that the unity of Australia will be imperilled to an alarming extent. Let me quote the words of Chief Justice Marshall in the case of *McCulloch* v. *Maryland*, relative to similar claims which are really applicable to our own conditions. If, he said, the claims were sound and valid pretensions on the part of the States, then—

They may tax the mail, they may tax the Mint, they may tax patent rights, they may tax the papers of the Customs House, they may tax judicial process, they may tax all the means employed by the Government to an excess which would defeat all the ends of the Government. This was not intended by the American people. They did not design to make their Government dependent on the States.

Adapting his words to our case, I might say that the Australian people never for one moment designed to make the Commonwealth Government dependent on the States. The Privy Council does not appear to have realized to the fullest extent the fundamental inroads and alterations which were necessarily made with regard to the State Constitutions when the Commonwealth Constitution was established. It appears to have laid down what to us is another somewhat startling proposition, and that is that a Bill of the Victorian Legislature, once assented to by the Crown, is an Act of Parliament as much as an Imperial Act, and its validity cannot be questioned, except so far as it may be repugnant to Imperial Acts extending to the Colony within the meaning of the Colonial Laws Validity Act. That to us is a most ex-

traordinary proposition. Each State has its own Constitution, and its jurisdiction is limited within the four corners of the document. In several cases some of the States have exceeded their jurisdiction.

Senator GIVENS.—Their jurisdiction is also limited by the Federal Constitution.

Senator BEST.—Undoubtedly, in so far as our jurisdiction is carved out of the jurisdiction of the several States to that extent the States are limited. I do not think that there would be much difficulty—one case is present to my mind now—in finding cases in which the Privy Council has decided that in certain respects the jurisdiction exercised by a Colony was *ultra vires*.

Senator WALKER.—Our own Constitution is an Imperial Act.

Senator BEST.—Exactly; but we are bound by the provisions contained within the four corners of that Act. In its judgment in *Webb* v. *Outtrim* the Privy Council sought to set aside the old doctrine of *ultra vires*, and practically said that once a Bill had been passed by a State Legislature and assented to by the Crown, it must be taken as perfect law and unchallengable. That, I repeat, is a somewhat startling proposition. Every properly-constituted American Court has the right to say whether an Act of the Congress or the State Legislature is or is not *ultra vires*, and if exception be taken to the judgment, a party has the right to appeal, until ultimately the case reaches the Supreme Court, whose decision is final. But, according to the Privy Council, if in its legislation a State in the Commonwealth has exceeded its jurisdiction it must be accepted, and cannot be challenged. If that doctrine be sound, and if the States have exceeded their jurisdiction, we are brought to a most serious *impasse*, and the Commonwealth has good reason to take alarm at the promulgation of that startling proposition, and to consider how far it may be affected thereby. While admitting that each State has the right to govern within its own ambit I submit that it is confined to that ambit. The only other suggestion which may be made—if the proposition I have referred to be a sound one—is that it would become necessary to exercise great scrutiny whenever Bills were submitted to the Governor-General for the Royal assent. It would be ridiculous for us to have to descend to a procedure of that kind. It would mean that our Bills, after having been submitted to the Governor-General, would have to be forwarded to the Secretary of State, who, no doubt, with legal assistance, would become the final arbiter as to how far the proposed law affected a State or the Commonwealth as the case might be. In other words, it would constitute an irresponsible body like the Colonial Office to take the place of the High Court, which we intended to discharge those grave and important functions.

Senator ST. LEDGER.—And that body would come to its decisions *in camera*.

Senator BEST.—Yes. Since the decision in the case of *Webb* v. *Deakin*, these cases have all been reconsidered by the High Court, which, after most elaborate arguments, not only in this State, but in another State, and after the fullest consideration, has delivered a most exhaustive judgment in the cases of the *Commissioners of Taxation of New South Wales* v. *Baxter*, and *Flint* v. *Webb*. Therefore, the decision of the High Court, embodying all the important and vital propositions to which I have already referred is not a mere sudden decision. Those principles have been affirmed and re-affirmed in the various cases which I have quoted, and lastly they have been fully considered in the light of the judgment of the Privy Council. No one can read the various judgments of our Court, particularly in regard to constitutional questions, without being struck with their luminous and erudite character; with the extraordinary industry that has been brought to bear in the way of research and investigation, and with the exhaustive character of those judgments from every stand-point. I claim that our High Court has fulfilled all the highest expectations that were expressed in connexion with it, not only here but in the Imperial Parliament, when the Constitution Bill was being discussed by that body. Lord Davey there said, dealing with the Bill, and particularly with clause 74:—

> "I have no doubt that the Judges of the Australian Courts will approach the consideration of these Constitutional questions in a large and statesmanlike spirit, and will treat the Act more as it ought to be treated, more in the nature of a treaty for reconciling conflicting interests."

The High Court has fulfilled to the very uttermost those predictions. Before leaving this branch of the subject, I shall sum up by saying that the decision in the case of *Webb* v. *Outtrim* has destroyed the status of the High Court as an integral part of our Constitution, unsettled the

respective powers of the Commonwealth and the States, and destroyed the finality of the High Court. Hence the responsibility is cast upon Parliament of dealing with the *impasse* so created. I shall now ask honorable senators to follow me with regard to the judicial powers of the Commonwealth. The first section to which I desire to draw their attention is section 71—the first section in chapter iii. of the Constitution, relating to the Judicature. I would remind honorable senators that the three great fundamental principles of Government—the Legislature, the Executive, and the Judicature—are all embodied in our Constitution, the Legislature in the first chapter, beginning with section 1; the Executive Government in the second chapter beginning with section 61, and the Judicature, or the judicial powers of the Commonwealth, in chapter iii. Section 71 is as follows:—

> The judicial power of the Commonwealth shall be vested in a Federal Supreme Court to be called the High Court of Australia—

Therefore we have first the High Court—

> and in such other Federal Courts as the Parliament creates—

In other words, it is competent for Parliament to create Federal Courts for the purpose of carrying out the judicial powers of the Commonwealth—

> and in such other courts as it invests with federal jurisdiction.

Honorable senators will, therefore, see that there is constituted first of all a High Court; then Parliament is given power to create Federal Courts, or if it does not desire to go to the expense of that machinery, it has the right to invest State Courts with Federal jurisdiction. I shall next draw attention to section 73, which provides—

> The High Court shall have jurisdiction, with such exceptions and subject to such regulations as the Parliament prescribes, to hear and determine appeals from all judgments, decrees, orders, and sentences—
>
> (I.) of any Justice or Justices exercising the original jurisdiction of the High Court;
>
> (II.) of any other Federal Court, or Court exercising Federal jurisdiction; or of the Supreme Court of any State, or of any other Court of any State from which at the establishment of the Commonwealth an appeal lies to the Queen in Council.

Then paragraph (III.) refers to the Inter-State Commission. Honorable senators will, therefore, recognise that we have with complete deliberation created by this section a national Court so far as appellate jurisdiction is concerned—a Court which shall hear general appeals not only from its own Federal Courts, but likewise from the State Courts—and so the point I make in that connexion is that a national Court with appellate jurisdiction has thereby been created. We come then to the all important 74th section, which is the crux of the position. I ask honorable senators to listen to its terms, to apply their own commonsense as typical of the common-sense of the community, and to say whether they did not, when they enacted this section, intend that it should give final and complete jurisdiction on constitutional questions to our own High Court. Section 74 says—

> No appeal shall be permitted to the Queen in Council from a decision of the High Court upon any question, howsoever arising, as to the limits *inter se* of the Constitutional powers of the Commonwealth, and those of any State or States, or as to the limits *inter se* of the Constitutional powers of any two or more States, unless the High Court shall certify that the question is one which ought to be determined by Her Majesty in Council.

Senator ST. LEDGER.—The words "howsoever arising" are very important.

Senator BEST.—Yes. Honorable senators will see that with deliberation and intention we constituted our own High Court a final court for the purpose of dealing with and deciding as to the distribution of the powers to which I have already referred, and enacted that there was to be no appeal except upon the certificate of the High Court itself, permitting such an appeal. That power would be exercised no doubt only in extraordinary and special cases, but it was left at all events to the complete and unlimited discretion of the High Court to determine whether that certificate should be granted or not. Section 74 further provides:—

> The High Court may so certify, if satisfied that for any special reason the certificate should be granted, and thereupon an appeal shall lie to Her Majesty in Council on the question without further leave.

Then it goes on—

> Except as provided in this section, the Constitution shall not impair any right which the Queen may be pleased to exercise by virtue of her Royal prerogative, to grant special leave of appeal from the High Court to Her Majesty in Council.

I would say in this connexion that it was a source of considerable disappointment to those who have taken a keen interest in this subject, that, when the case of *Webb* v. *Outtrim* went to the Privy Council, the Privy Council—recognising as

it must do that the High Court of Australia was constituted a final Court of Appeal, and that that final Court of Appeal has laid down the law of Australia by its judgment in the case of *D'Emden* v. *Pedder*, and in the other case of *Deakin* v. *Webb*—did not accept the judgment of the High Court as the Australian law by which it should be guided, the more especially when it is borne in mind that the High Court had decided that the case in question came within section 74 of the Constitution. The whole spirit of the section to which I have referred is that the High Court shall be the final Court of Appeal in regard to constitutional questions. I admit that it has been contended—and this, perhaps, was the view taken by the Privy Council, as it was the view of one of our High Court Judges—that the decision in question must be the decision of the High Court itself. It has been urged that in the case of *Webb* v. *Outtrim*, the decision in dispute was given by one of the State Courts exercising State jurisdiction. We say in reply that that State Court was exercising Federal jurisdiction; but it is urged in answer to that argument that as the decision was not that of the High Court, there was, therefore, a direct appeal to the Privy Council. Unfortunately, the ambiguous terms of section 74 of the Constitution are such that if the Commonwealth Parliament had not the power to enact legislation dealing with Federal jurisdiction and appeals under Federal jurisdiction—if the Federal Parliament were not specially clothed with power to deal with Federal jurisdiction—it is possible to contend that, reading the section as it stands alone, apart altogether from Commonwealth legislation passed in pursuance of other sections of the Constitution, there are two final Courts of Appeal. But I wish to emphasize the bearing upon the question of the remaining sections of the Constitution. Section 75 deals with the original jurisdiction of the High Court. The High Court gets all its judicial power from sections 73, 75, and 76. Section 75 provides that—

> In all matters (i.) arising under any treaty; (ii.) affecting consuls or other representatives of other countries; (iii.) in which the Commonwealth or a person suing or being sued on behalf of the Commonwealth is a party; (iv.) between States or between residents of different States, or between a State and a resident of another State; (v.) in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth: the High Court shall have original jurisdiction.

In the following section, the Constitution goes on to say that—

> The Parliament may make laws conferring original jurisdiction on the High Court in any matter—

Then it enumerates four matters as to which Parliament may make laws conferring original jurisdiction. The first is—

> Arising under this Constitution or involving its interpretation.

The second is—

> Arising under any laws made by the Parliament;

the third is—

> Of Admiralty and maritime jurisdiction;

and the fourth is—

> Relating to the same subject-matter claimed under the laws of different States.

I have shown the source from which we get our judicial authority. The next section says—

> With respect to any of the matters mentioned in the last two sections, the Parliament may make laws (i.) Defining the jurisdiction of any Federal Court other than the High Court; (ii.) Defining the extent to which the jurisdiction of any Federal Court shall be exclusive of that which belongs to or is invested in the Courts of the States.

In other words, by that section the Imperial Parliament has authorized the Commonwealth Parliament to exclude State jurisdiction in regard to the matters under sections 75 and 76, and to substitute Federal jurisdiction. Under the next paragraph of section 77, Parliament is authorized to make laws—

> Investing any Court of a State with Federal jurisdiction.

So the position is that, exercising the power conferred upon us of utilizing States Courts as part of our Federal machinery, we are at liberty, instead of going to the serious expense of constituting Federal Courts for ourselves, to define, to any extent that we think proper, the Federal jurisdiction which States Courts shall exercise. We can exclude their jurisdiction in regard to the subjects enumerated, and we can substitute our own Federal jurisdiction in its stead. And that is exactly what we have sought to do. It is what we did by subsequent provisions, which I shall point out. In other words, section 77 of the Constitution gives power to define jurisdiction. The clear intention of the Constitution was to enable Parliament to say, if it chose, that the judicial power of the Commonwealth in the matters dealt with under sections 75 and 76 could be exercised by States

Courts, and thus avoid the necessity of creating local Federal Courts. It enabled us to provide for States Courts invested with Federal jurisdiction exercising the judicial power of the Commonwealth, as though they formed part and parcel of the Federal Judicature. I have already mentioned that Parliament has power to make laws conferring original jurisdiction upon the High Court in any matter arising under the Constitution. The first thing that Parliament did by its Judiciary Act, section 30, was to provide that, in addition to matters in which original jurisdiction is conferred on the High Court by the Constitution, the High Court shall have original jurisdiction in all matters arising under the Constitution or involving its interpretation. If we had gone one step further, and provided in that section that the High Court should have exclusive jurisdiction, I contend that the conflict which has occurred in consequence of the decision in *Webb* v. *Outtrim* would in all probability never have arisen.

Senator ST. LEDGER.—The mischief probably arose from the omission of the term "exclusive jurisdiction."

Sitting suspended from 1 to 2 p.m.

Senator BEST. — I come now to section 38 of the Judiciary Act. It is provided, as honorable senators will be aware, by section 77 of the Constitution that Parliament shall have power to make laws with respect to the matters mentioned in sections 75 and 76, "defining the extent to which the jurisdiction of any Federal Court shall be exclusive of that which belongs to or is vested in the Courts of the States." By section 38 of the Judiciary Act, the jurisdiction of the High Court is made exclusive of the jurisdiction of the several Courts of the States in regard to certain matters which are mentioned in section 75 of the Constitution. The position is that we have conferred exclusive jurisdiction in regard to certain matters contained in section 75 of the Constitution, but not as regards other matters. Then we come to section 39 of the Judiciary Act, and we say that as regards the balance left over of the matters referred to in section 75 of the Constitution, and as regards matters contained in section 76 of the Constitution the State jurisdiction as such shall be excluded, and in its place following paragraph III., section 77, of the Constitution, we have invested the States Courts with Federal jurisdiction in regard to those matters. Honorable senators will recognise that in enacting our Judiciary Act we have followed the sections of the Constitution, and we have said that as regards some of the matters mentioned in section 75, there shall be exclusive jurisdiction in the High Court, and as regards other matters mentioned in sections 75 and 76, there shall be given the jurisdiction provided for in section 39 of the Judiciary Act. As the latter section is neither simple nor luminous, I shall not quote it at length. I have explained that certain matters were left over under section 38 of the Judiciary Act, and they are dealt with in section 39, which provides—

(1) The jurisdiction of the High Court in matters not mentioned in the last preceding section shall be exclusive of the jurisdiction of the several courts of the States—

except as subsequently provided. Now we come to what was provided, and this is the crux of the matter. The majority of the High Court and the Government believe that section 39 of the Judiciary Act is a valid section. If it is, the jurisdiction of the Privy Council should have been excluded. Practically the effect of the judgment of that tribunal is that the enactment by this Parliament of section 39 of the Judiciary Act was *ultra vires*. In that section we said that, having divested States Courts of State jurisdiction, we then claimed that we had the right to invest them with Federal jurisdiction upon our own terms, and that we had the right to say that when they are exercising our Federal jurisdiction, they shall do so in a particular way, and that if there is to be an appeal from any judgment of a State Court exercising Federal jurisdiction that appeal must be to the High Court. If that view were sustained, undoubtedly the appeals in the cases referred to could not have been made to the Privy Council. But it is contended —and the contention is one with which I cannot agree—by those who support the Privy Council's decision, that when we attempted to take away the right of appeal from the States Courts when exercising what we claimed to be Federal jurisdiction, we were abrogating or repealing *pro tanto* some Imperial Act. I say that the answer to that is that our Constitution is an Imperial Act, and that the exercise by the Federal Parliament of the rights conferred upon it by our Constitution Act enabled us *pro tanto* practically to effect the repeal.

Senator ST. LEDGER.—Our Constitution is strengthened by an Imperial Act.

Senator BEST.—It is the latest expression of the Imperial will. As regards section 39 of the Judiciary Act, which contemplates the limitation of appeals to the High Court, the Privy Council held that it was *ultra vires*, whilst our High Court, by a majority of four Justices to one, has held that it is *intra vires*, and that the Parliament had full power to enact that section. Honorable senators will see that the Commonwealth Parliament, by sections 38 and 39 of the Judiciary Act, fully divested State Courts of State jurisdiction as far as the matters mentioned in sections 75 and 76 of the Constitution are concerned, and then invested them with Federal jurisdiction in regard to some of the subjects with certain limitations. It would be very interesting to discuss the question as to the power of the Commonwealth Parliament to exclude State jurisdiction in those cases in which the High Court has original jurisdiction. In this connexion we have a right to call to our aid not only the American Constitution, but many American authorities. The American Constitution itself, and its weaknesses in this regard, as well as the authorities founded on that Constitution, were all present to the minds of the framers of the Commonwealth Constitution, when they proposed the enactment of section 77, which goes beyond the American Constitution, and gives not only the right to divest States Courts of jurisdiction, but the power also to invest them with Federal jurisdiction. Therein were some of the weaknesses discovered in the American Constitution, which no doubt were cured by American authorities, but the framers of our Constitution were not prepared to run the risk of relying upon those authorities. Therefore going further than the American Constitution they said in direct words, "We shall give the power first of all to divest and then to invest." Further, section 51 of the Constitution, sub-section 39, gives power to make laws with respect to, "Matters incidental to the execution of any power vested by this Constitution in the Parliament . . . or in the Federal Judicature." The Federal Parliament has no power over State jurisdiction. We do not claim it in any shape or form, that is to say, the matters to which the judicial power of the Commonwealth does not extend. In the matters of Federal jurisdiction mentioned in sections 75 and 76 of the Constitution, we claim that we have the right to do as we like, and we have done as we liked in sections 38 and 39 of the Judiciary Act.

Senator GIVENS.—And we are going to do as we like in future?

Senator BEST.—That is the object of the Bill I am submitting to the Senate.

Senator ST. LEDGER.—No; to do what is right under the law.

Senator BEST.—Now I propose to deal with the Bills themselves, with a view to showing exactly how we have attempted to apply this remedy. I shall first direct attention to the measure which seeks to amend the Judiciary Act. Clause 2 provides that in certain matters the jurisdiction of the High Court shall be exclusive of the jurisdiction of the States Supreme Courts. It declares that—

> In matters (other than trials of indictable offences) involving any question, howsoever arising,

Then follow the words which are employed in section 74 of the Constitution Act, namely—

> As to the limits *inter se* of the Constitutional powers of the Commonwealth and those of any State or States, or as to the limits *inter se* of the Constitutional powers of any two or more States, the jurisdiction of the High Court shall be exclusive of the jurisdiction of the Supreme Courts of the States.

In other words, it confers upon the High Court exclusive jurisdiction in regard to all constitutional questions arising under section 74 of the Constitution Act. Honorable senators will observe that we have excluded indictable offences. Our reason for excluding indictable offences is that, so far, we have not constituted for such purposes our own Federal Courts. We have simply utilized the State Courts, and, as far as possible, we intend to do so, with a view to saving expense. If we conferred exclusive jurisdiction upon the High Court to deal with indictable offences we should have to create other Federal Courts which would necessarily involve a considerable outlay.

Senator ST. LEDGER.—Then the object of excluding indictable offences is one of economy?

Senator BEST.—Yes.

Senator WALKER.—Suppose that a Federal employé were guilty of an indictable offence would he be tried by the State Court within whose jurisdiction he happens to reside?

Senator BEST.—He would be tried by the State Court, subject to a power of removal of the cause to the High Court, if a constitutional question were raised, at the instance either of the Federal Attorney-General or of the State Attorney-

General. We can continue to utilize all the State machinery in connexion with the trial of indictable offences. But we declare that, if, at any time, in the course of any cause, a question arises under section 74 of the Constitution it shall be competent—if special reason can be shown—to apply for its removal to the High Court. If either the Federal Attorney-General or the State Attorney-General make such an application the cause will be removed as of course. Hitherto this power for the removal of causes was limited to causes upon appeal. We seek to remove that limitation, and consequently the provision declares that at any stage—if a constitutional question be raised—it shall be competent to make application for the removal of the cause in which it is involved to the High Court. Shortly stated, these are the objects of the Bill which has been framed in accordance with the provisions of the Constitution Act, and which seeks to make the High Court the final arbiter upon all constitutional questions.

Senator GIVENS.—Does the Vice-President of the Executive Council rely upon section 74 of the Constitution as his authority for seeking to pass this Bill?

Senator BEST.—I rely upon section 74 and sections 76 and 77. Section 76 says—

> The Parliament may make laws conferring original jurisdiction on the High Court in any matter—
>
> (i) Arising under this Constitution, or involving its interpretation.

and section 77, paragraph II., enables us to define the extent to which the jurisdiction of any Federal Court shall be exclusive of that which belongs to or is invested in the Courts of the States.

Senator GIVENS.—Other than the High Court?

Senator BEST.—Yes.

Senator GIVENS.—Then this Bill is really intended to bring about finality?

Senator BEST.—Exactly. Honorable senators are familiar with what has occurred in connexion with the taxation by the States of the salaries and allowances paid by the Commonwealth. What we seek to declare is that—

> taxation by a State, in common with other salaries earned within the State, of—
>
> (*a*) the official salaries of officers of the Commonwealth earned in the State after the commencement of this Act; and
>
> (*b*) the allowances, paid after the commencement of this Act of members of the Parliament elected in the State,
>
> shall not, if the taxation is not at a higher rate or to a greater extent than is imposed on other salaries of the same amount earned in the State, be deemed—
>
> (*c*) to be an interference with the exercise of any power of the Commonwealth, or
>
> (*d*) to be inconsistent with any Act by or in pursuance of which the salary is fixed or made payable.

Senator GIVENS.—Does the Vice-President of the Executive Council think that an allowance to a member of this Parliament should be called "income" or "salary"?

Senator BEST.—I will deal with that matter presently. It will be recollected that in the case of *D'Emden* v. *Pedder*, and also in that of *Deakin* v. *Webb*, the High Court declared that the States had no power to impose income tax, because it constituted an interference with the exercise of the powers of the Commonwealth, and because it might be inconsistent with certain Acts by and in pursuance of which salaries are made payable.

Senator ST. LEDGER.—The clause which the Vice-President of the Executive Council has quoted puts forward a negative. Would it not be better to provide that the salaries paid by the Commonwealth shall be liable to income tax with the limitation proposed?

Senator BEST.—We are really following American precedent in this connexion. The taxation by a State of allowances paid by the Commonwealth to members of this Parliament is to be deemed to be good. But the provision is more restricted than the present law as it has been laid down by the Privy Council in that connexion. What we declare in this Bill is that Members of Parliament elected by the several States may only be taxed by the States in which they are elected—that they may not be taxed by other States. In other words, the representatives of Queensland may be taxed in regard to that portion of their allowance, if any, earned in Queensland. But they may not be taxed in respect of any portion of that allowance earned in Victoria or any other State.

Senator GUTHRIE.—Why is it proposed to exempt the salary of the Governor-General?

Senator BEST.—As a matter of fact, the Governor-General has always been exempted from Acts of this class.

Senator GIVENS.—That is no reason why we should continue to exempt him.

Senator BEST.—We think that he ought to be exempt. In that we are following what has been the practice.

Senator ST. LEDGER.—He represents the King.

Senator BEST.—I am sure that honorable senators will recognise that the exemption is a reasonable one. It is remarkable that the problem with which we are now dealing arose under the Constitution of the United States of America, which in this respect is practically the same as our own. Under the American Constitution, it was competent for Congress, as it is for the Commonwealth Parliament, to deal with the subject of banking, and to provide for the incorporation of banks. The State of Maryland saw fit to impose taxation upon the shares of banks or branches thereof in that State not chartered by its Legislature, and this led to the famous case of *McCulloch* v. *State of Maryland* in the Supreme Court of the United States. In that case it was held by that eminent jurist, Chief Justice Marshall, that—

Congress has power to incorporate a bank.

The Government of the Union is a government of the people; it emanates from them; its powers are granted by them; and are to be exercised directly on them, and for their benefit.

The Government of the Union, though limited in its powers, is supreme within its sphere of action, and its laws, when made in pursuance of the Constitution, form the supreme law of the land.

There is nothing in the Constitution of the United States similar to the articles of confederation, which excludes incidental or implied powers.

If the end be legitimate, and within the scope of the Constitution, all the means which are appropriate, which are plainly adapted to that end, and which are not prohibited, may constitutionally be employed to carry it into effect.

The power of establishing a corporation is not a distinct sovereign power or end of government, but only the means of carrying into effect other powers which are sovereign. Whenever it becomes an appropriate means of exercising any of the powers given by the Constitution to the Government of the Union, it may be exercised by that Government.

If a certain means to carry into effect any of the powers, expressly given by the Constitution to the Government of the Union, be an appropriate measure, not prohibited by the Constitution, the degree of its necessity is a question of legislative discretion, not of judicial cognisance.

The Act of 10th April, 1816, c. 44, to "incorporate the subscribers to the Bank of the United States," is a law made in pursuance of the Constitution.

The Bank of the United States, has, constitutionally, a right to establish its branches or offices of discount and deposit within any State.

The State, within which such branch may be established, cannot, without violating the Constitution, tax that branch.

The State Government have no right to tax any of the constitutional means employed by the Government of the Union to execute its constitutional powers.

I wish to show how close is the analogy between that case and the one with which we have now to deal. It has been claimed, indeed it has been asserted by one of the Justices of our own Court, that we, as a Parliament, have no right to forego the exemption or immunity from certain taxation which we enjoy by reason of the decision of the High Court. I wish, however, to show how, when the same question arose in America, Congress met the situation, and that it is competent for us to enact this legislation, in order to forego the exemption. I know it is said that we have no power to do so, and it is only fair to give the other side. In the case of *Flint* v. *Webb*, Mr. Justice Higgins said—

It is said that the Federal Parliament can exercise its power under sec. 77 (II.) so as to deprive all the State Courts of all Federal appellate jurisdiction. I do not think that we are entitled to reckon on the Parliament taking any such extreme step—a step which would deprive the Commonwealth of the assistance of the very efficient State Courts, would lead to the raising of sham Federal issues in order to delay decisions in the State Courts, would cause delay and expense to suitors, and would saddle the Commonwealth with many new Federal Courts and functionaries.

As a matter of fact, the extreme exercise of the power might in some cases have that effect; but we do not propose anything of the kind. As a matter of fact, we do not propose to invest the High Court with exclusive jurisdiction to deal with indictable offences. That would be a most expensive proceeding. Mr. Justice Higgins continued—

But even if the Federal Parliament acted on this suggestion, it could not reverse the decision, which will stand, of the King in Council.

Then he went on to say—

As to the other suggestion that the Federal Parliament may make its grants of salary subject to the rights of the States to tax them, I merely refer to it, because I do not at present want to be committed to any definite view on the subject. At present I cannot see how, if an income tax upon the salary of a Federal servant is made invalid by the Constitution, the Federal Parliament can alter the Constitution by making the income tax payable.

That is a dictum, possibly an *obiter dictum*, of one of the Justices of the High Court, and is entitled to respect. My first answer to it is the decision which was given in the

same case, by the Chief Justice, with the approval, I think I may say, of three of the four other Justices before whom it was heard. His Honour said—

I will only say a word with reference to the argument used by Mr. Irvine as to what he called the "intolerable position" existing because of there being conflicting judgments of this Court and the Privy Council on the same subject. I do not think the position is intolerable. I do not think that is the correct epithet. It may be called an inconvenient position. But, whatever it is called, he says the strong reason why a certificate should be granted is that there is no other way of escape from that position. If it were true that there is no way of escape from that position unless we give a certificate, still, in the public interest and for the future welfare of the Commonwealth, I think it would be better that the position should continue, however inconvenient, than that escape should be made from it in that manner.

But it is not correct to say that there is no other way of escape. There are two ways of escape, quite easy, and both open.

One of which we are now proposing to exercise in the Bill before honorable senators—

One is the exercise by the Federal Parliament of its power under section 77 (2) of the Constitution, which can be done in various ways. One way would be by making the appellate jurisdiction of this Court exclusive of the appellate jurisdiction of the State Supreme Courts in some or all of the matters which together are called Federal jurisdiction. They may exercise that power in full or limit it to any class of those matters.

That is exactly what we are doing. We have founded our Bill on the advice of the majority of the High Court—on the decision of four Justices to one—

The other way in which the inconvenience can be remedied is one which was pointed out in the judgment of the majority of this Court delivered yesterday. The Federal Parliament can, if it pleases, make its grants to its servants subject to the right of the States to tax them—

He then quotes a well-known Latin maxim that a person may waive a right established for his own benefit—

This argument, which is the only novel one in addition to those used in *Deakin* v. *Webb* (1), therefore fails, and I think the certificate should be refused.

Thus it will be seen that when the power of the Parliament to deal with legislation of this kind is challenged—and I am referring, of course, to the Commonwealth Salaries Bill—my first answer is that we have the authority of the High Court for enacting it. That is good enough for me, and I think it ought to be good enough for Parliament. I shall go further, and show exactly what was done by Congress under exactly similar circumstances. Congress passed an Act for the regulation of the banking business; and it will be interesting to honorable senators to hear the exact terms of the section of that Act, which we are following in principle in the Bill before the Chamber. That section is 5219, which will be found on page 1009 of the *Revised Statutes of the United States*, second edition, 1878, and I shall read it because it so happens that its validity was afterwards challenged in certain cases. The section is as follows:—

Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located—

Honorable senators will remember the case of *McCulloch* v. *State of Maryland*, in which it was contended that shares could not be taxed, and to which I have already referred. The section proceeds—

but the Legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either State, country, or municipal taxes, to the same extent, according to its value, as other real property is taxed.

As I have said, the Bill before us follows the principle of that section, and I am now endeavouring to answer the challenge that we, as a Parliament, have no right to forego the Commonwealth exemption or immunity from State taxation in this regard. There are several cases in which the validity of the section was challenged; and in one of these, *Austin* v. *The Aldermen*, reported in volume 74 of the *United States Reports*, known as *Wallace*, 7, there are certain principles declared.

The right of taxation, where it exists, is necessarily unlimited in its nature. It carries with it inherently the power to embarrass and destroy.

It is well settled that the States cannot exercise this authority in respect to any of the instrumentalities which the general government may create for the performance of its Constitutional functions. It is equally well settled that this exemption may be waived wholly, or with such limitations and qualifications as may be deemed proper, by the law-making power of the nation; but the waiver must be clear, and every well-grounded doubt upon the subject should be resolved in favour of the exemption.

That is a very strong legal position, laid down with undoubted force and clearness under similar circumstances to our own. I am not attempting to give honorable senators the details of those cases, because it would prolong my remarks to an unconscionable length. The next case I desire to bring under notice is that of the *Owensboro National Bank* v. *Owensboro*, reported in volume 173 of the *United States Reports*. The first section of the headnote is as follows:—

A State is wholly without power to levy any tax, either direct or indirect, upon national banks, their property, assets, or franchises, except when permitted so to do by the legislation of Congress.

The report then deals with section 5219, which I have already read.

Section 5219 of the Revised Statutes is the measure of the power of States to tax national banks, their property or their franchises, that power being confined to a taxation of the shares of stock in the names of the shareholders, and to an assessment of the real estate of the bank.

Mr. Justice White, who delivered the opinion of the Court, said—

Early in the history of this Government, in cases affecting the Bank of the United States, it was held that an agency, such as that bank was adjudged to be, created for carrying into effect national powers granted by the Constitution, was not in its capital, franchises, and operations subject to the taxing powers of a State.

Then the Judge, having quoted certain authorities, went on to say—

The principles settled by the cases just referred to, and subsequent decisions were thus stated by this Court in *Davis* v. *Elmira Savings Bank*, 161 U.S. 283:

"National banks are instrumentalities of the Federal Government, created for a public purpose, and as such necessarily subject to the paramount authority of the United States. It follows that an attempt, by a State, to define their duties or control the conduct of their affairs is absolutely void, wherever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation or impairs the efficiency of these agencies of the Federal Government to discharge the duties, for the performance of which they were created. These principles are axiomatic, and are sanctioned by the repeated adjudications of this court."

It follows then necessarily from these conclusions that the respective States would be wholly without power to levy any tax, either direct or indirect, upon the national banks, their property, assets or franchises, were it not for the permissive legislation of Congress. . . . . The proposition then comes to this: Nothing but the shares of stock in the hands of the shareholders of a national bank can be taxed, except the real estate of the bank. The taxes which are here resisted are not taxes levied upon the shares of stock in the names of the shareholders, but are taxes levied on the franchise or intangible property of the corporation. Thus, bringing the two conclusions together, there would seem to be no escape in reason from the proposition that the taxing law of the State of Kentucky is beyond the authority conferred by the Act of Congress, and is therefore void for repugnancy to such Act.

Towards the end of the judgment, His Honour said—

The system of taxation devised by the act of Congress is entirely efficacious and easy of execution. By its enforcement, as interpreted, settled policies of taxation have been evolved, embracing large amounts of property which would not otherwise be taxable, and which, as we have seen, will escape taxation if the past development of the system be destroyed, by recognising, without reason, a principle inconsistent with the law and destructive of the safeguards which it imposes.

The last authority I shall quote is that contained in the case of the *Cleveland Trust Company* v. *Lander*, reported in volume 184 of the *United States Reports*. The judgment of the Court was delivered by Mr. Justice McKenna, who, after stating the case, said—

The argument of the plaintiff in error claims a greater immunity from taxation for the shares of the Trust Company than section 5219 of the Revised Statutes of the United States gives to shares in national banks. That section permits the States to assess and tax the shares of shareholders in national banks, with the limitations only "that the taxation shall not be at any greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State"; and that the shares of non-residents "shall be taxed in the city or town where the bank is located, and not elsewhere." The prayer of the petition is also opposed by decisions of this court. In *Van Allen* v. *The Assessors*, 3 Wall 573, the provision contained in section 5219—then a part of the Act of Congress of June 3, 1864—came up for consideration. There was a dispute as to the meaning of the statute, and its validity was also assailed. The court asserted a distinction between the property of the bank and corporation as such, and the property of the shareholders as such, and held that the tax authorized by the statute was a tax on the shares, the property of the shareholder, not a tax on the capital of a bank, the property of the corporation. The validity of the statute was sustained, and interpreting it the court said that it authorized the taxation of such shares, and shares were defined to be the whole interest of the holder without diminution on account of the kind of property which constituted the capital stock of the bank. On the provisions of the Act expressing this purpose, and the right of the State to tax, the court said nothing "could be made plainer or more direct and comprehensive." The case was subsequently affirmed.

Although section 5219 was originally part of an Act passed in 1864, the case

referred to was before the courts in 1901, and there is a succession of judgments confirming it.

Senator ST. LEDGER.—Therefore we have the judgments of the American Courts, and the views of four Justices of our own High Court, against the *obiter dictum* of Mr. Justice Higgins.

Senator GUTHRIE.—What has America to do with us? Nothing.

Senator BEST.—Our Constitution was founded on that of the United States of America, and its main principles were drawn from that instrument. It is, therefore, interesting and important to see how a problem arising under it has been dealt with in America. The authorities which I have cited furnish a conclusive answer to those who doubt the power of the Commonwealth Parliament to enact the legislation which I am now proposing. The conflicting decisions of which I have spoken impose a great responsibility upon us; but I submit that the Constitution enables us to find a way out of our difficulty, and that the measures which I am introducing provide for our doing so in a manner in accordance with the spirit and principles of the Constitution.

Senator GIVENS.—The Judiciary Bill is merely a re-affirmation of the principles of the Constitution.

Senator BEST.—That is what it is intended to be. In regard to the Commonwealth Salaries Bill, while I admit that the High Court was justified in preventing any interference with Commonwealth agencies, such as they deem the taxation by the States of the incomes of the members of the Commonwealth Public Service to be, it is not fair that we should permit this body to become a privileged class. As Commonwealth public servants enjoy all the privileges of citizenship in the States in which they are located, they may be justly called upon to bear their share of the taxation necessary to provide revenue for the government of those States. Consequently, we wish to provide that, subject to certain conditions, the States may tax Commonwealth servants in common with their other citizens.

Senator GIVENS.—If the Constitution says that the Commonwealth public servants shall not be taxed by the States, can we validly legislate in contradiction of that provision?

Senator BEST.—The American judgments and legislation show that we can waive the exemption, subject to the conditions I have mentioned. I have also stated that four of the Justices of our High Court say that we have power to do this.

Senator GIVENS.—Has the honorable and learned senator given us the opinion of Mr. Justice Higgins?

Senator BEST.—Yes. I have tried to put the whole subject as briefly as possible before honorable senators, in order to show them the nature of the difficulty that we have to face, and the manner in which we conceive that it can best be met. What is proposed is consistent with the Constitution, and I commend the Bill to favorable consideration. I trust that it will be unanimously approved of.

Debate (on motion by Senator ST. LEDGER) adjourned.

COMMONWEALTH SALARIES BILL.

SECOND READING.

Motion (by Senator BEST) proposed—

That the Bill be now read a second time.

Debate (on motion by Senator GRAY) adjourned.

Senate adjourned at 2.51 p.m.