SINGULARS, PLURALS, AND SECTION 57 OF THE CONSTITUTION

BY GEOFFREY SAWER*

Whether words in the singular include the plural or whether words in the plural include the singular is a common problem of statutory interpretation. Acts interpretation legislation of the States and the Commonwealth offer slightly varying presumptions for dealing with the problem. Professor Sawer analyses these presumptions and their application in numerous cases. As well, reforms that would lead to greater clarity and uniformity of such legislation are suggested.

The second part of the article explores the special problems regarding singulars and plurals in the context of the Constitution and, in particular, section 57 which provides for the resolution of deadlocks between the Senate and the House of Representatives with regard to "any proposed law". The High Court's resolution of some of the problems raised when more than one proposed law is the subject of disagreement between the Houses of Parliament is exhaustively analysed. In addition, solutions are offered to a number of judicially unanswered questions relating to section 57 of the Constitution.

In natural speech, it is common for a noun which is singular in grammatical form to be understood as plural, and vice versa; thus when Robert Burns assures us that *a* man's a man for a' that, and when Shakespeare says *we* are such stuff as dreams are made on, even the most unpoetic would take them as referring to all men and to individuals respectively, not merely to a specific man in the first case nor to the collectivity in the second. Legislative draftsmen and conveyancers, however, have to deal with less obvious cases and to try to be more specific on such matters, and in earlier days their productions were heavily larded with "person or persons", not to mention heirs, executors, administrators, assigns *etc.* One of the consequences of the Benthamite movement in Britain was Lord Brougham's Acts Shortening Act of 1850,[1] section 4 of which provided that "the Masculine Gender shall be deemed and taken to include Females, and the Singular to include the Plural, and the Plural the Singular, unless the contrary as to Gender or Number is expressly provided. . .". This was itself a poorly drafted provision. Notice that under it the feminine does not include the masculine, and more importantly for present purposes, what is an *express* provision to the contrary? In *Chorlton* v. *Lings*[2]

* B.A., LL.M. (Melb.); Emeritus Professor of Law, Australian National University.

[1] 13 & 14 Vic., c. 21.

[2] (1868) L.R. 4 C.P. 374.

the question arose whether "every Man" in section 3 of the Representation of the People Act 1867 (U.K.) included women, by reason of Lord Brougham's Act, so enfranchising them by a side-wind. The Common Pleas managed to avert this dread result by several arguments, but two Judges were also prepared to treat "expressly" as requiring less than specific advertence, evinced in words, to the gender or number question; Byles J. thought "expressly" meant "plainly, clearly or the like"; Willes J., more cautiously, said "expressly" includes "what is necessarily or properly implied by language".[3] They thought the context, so understood, did sufficiently exclude the interpretation rule. However, a doubt remained about the word "expressly", and in the Interpretation Act 1889 (U.K.),[4] the 1850 Act was repealed, and the relevant provision was re-expressed thus:

> unless the contrary intention appears—
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> (a) words importing the masculine gender shall include females; and
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> (b) words in the singular shall include the plural, and words in the plural shall include the singular.[5]

Whatever doubts there might be about the views expressed in *Chorlton* v. *Lings* on the earlier provision, it was now clearly a reasonable view that inconsistency with context would be sufficient to exclude the presumption created by the Act.

The Australian Colonies soon adopted this interpretation rule, but some did so in the Brougham's Act form and some in the 1889 form, and a difference remains to this day. Victoria[6] adheres to the earlier form. Queensland adopts the later approach in a more precise wording:[7] "Unless the contrary intention appears . . . every word in the singular number. . ." *etc.* South Australia,[8] Western Australia[9] and Tasmania[10] have the later form in a somewhat complex setting. One has to read first an introductory section[11] dealing with exclusion of Acts Interpretation Act provisions generally, and then go to the section dealing with the gender and number question.[12] The exclusion rule in the earlier section involves two steps. First, "express provision" is contemplated as excluding the interpretation Act as a whole or, *semble*, any part of it; second, the individual interpretation rules are to apply

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[3] Female persons will enjoy Willes J.'s explanation that exclusion from the vote was a privilege and honour.

[4] 52 & 53 Vic. c. 63.

[5] S. 1. Note that "feminine" again fails to include males.

[6] Acts Interpretation Act 1958, s. 17 (Vic.).

[7] Acts Interpretation Act 1954-1971, s. 32 (Qld).

[8] Acts Interpretation Act 1915-1975, ss. 3, 26 (S.A.).

[9] Interpretation Act 1918-1975, ss. 3, 26 (W.A.).

[10] Acts Interpretation Act 1931, ss. 4, 24 (Tas.).

[11] The section first mentioned in nn. 8, 9, 10.

[12] The section mentioned second in nn. 8, 9, 10.

"except in so far as inconsistent with[13] the intent and object of the particular Act" to which the rules are being applied. The Commonwealth[14] adopts precisely the wording of the United Kingdom Act of 1889. In New South Wales, the Brougham's Act form applied from 1852-1897, and still applies to any Act of that period; since 1897, the United Kingdom 1889 formula applies.[15] All these Australian Acts follow the United Kingdom models in declining to treat the feminine as including the masculine.

It cannot be said that the question whether Lord Brougham's formula requires a more specific exclusionary intent than the 1889 formula has been settled. If a difference does exist, then it can be important in Victoria, because that State still follows the Brougham formula; the difference can also be important in the "first stage" inquiry required by the South Australian, Western Australian and Tasmanian sections. In *Re England*,[16] the Supreme Court of New South Wales adopted the view of Byles J. in *Chorlton* v. *Lings* as to the force of "expressly", but Innes J. expressed doubts about its correctness, especially since other provisions of the local Acts Shortening Act then in force specified what in terms seemed a lesser degree of contextual inconsistency; this was when the Brougham's Act formula as to the singular-plural question still applied in that State. In two cases heard almost simultaneously in 1957, *Healey* v. *Festini*[17] (involving "express exclusion" in a context other than that of the singular-plural rule) and *Healey* v. *Hambrook*[18] (involving the singular-plural rule) the Full Court of the Supreme Court of Victoria got itself into a tangle. The majority decision in the first case, where the provision in question was held *not* "expressly" excluded by another provision, was more consistent with a view that such a criterion required a stronger degree of propositional inconsistency than the Byles dicta in *Chorlton* suggests; Lowe J., dissenting, was both in his reasoning and his result much more of a Byles man, and even suggested that a "covering the field" type of inconsistency, as in the constitutional law cases, would be sufficient to exclude the provision subject to exclusion.[19] Yet in *Healey* v. *Hambrook*, where a majority including Lowe J. applied the State Acts Interpretation Act rule against a dissent by Gavan Duffy

[13] Tasmania inserts here "or repugnant to".

[14] Acts Interpretation Act 1901, s. 23 (Cth).

[15] Acts Shortening Act 1852, s. 6 (N.S.W.); Interpretation Act 1897, s. 21 (N.S.W.) and see also s. 2(1).

[16] (1892) 13 N.S.W.L.R. (L) 121.

[17] [1958] V.R. 225.

[18] [1958] V.R. 232.

[19] Gavan Duffy J. rejected this suggestion in strong terms ([1958] V.R. 225, 229-230). He had criticised *Chorlton* previously, in *Mason* v. *Teitler* [1956] V.L.R. 90.

J.,[20] *Healey* v. *Festini* was treated by Gavan Duffy J. as establishing the *Chorlton* view on "express" exclusion in this context. Lowe J. regarded *Healey* v. *Festini* as establishing only that "express" provision did not require *verbal reference* to the provision subject to exclusion. In *Porter* v. *Bryan*,[21] Burbury C.J. of the Tasmanian Supreme Court, when distinguishing a Victorian dictum on a consorting problem, assumed that the Victorian rule as to exclusion was stricter than the Tasmanian because the latter did not use the term "express". Perhaps, however, the decision of the Privy Council in *Shanmugam* v. *Commissioner for Registration of Indian and Pakistani Residents*,[22] although not decided in the context of a singular-plural problem, can be taken as authoritatively settling a presumptive meaning for "express provision" which does give that term more force than the provision as to contrariety in the Commonwealth, the present New South Wales, and the South and West Australian and Tasmanian ("second-step") sections. Lord Radcliffe said for the Board: "it is correct to state that express provision is provision the applicability of which does not arise by inference. . . . To be 'express provision' with regard to something it is not necessary that that thing should be specially mentioned; it is sufficient that it is directly covered by the language however broad the language may be which covers it so long as the applicability arises directly from the language used and not by inference therefrom".[23] This is a much more careful statement than anything in *Chorlton* or the Australian cases, but is consistent with the view expressed by Lowe J. in *Healey* v. *Hambrook*. However, the difference in expression between the Australian interpretation Acts is a nuisance and could well be removed. The "first step" in the South and West Australian and Tasmanian provisions is an unnecessary complication, and should be repealed. The Victorians, notwithstanding their historical allegiance to the Utilitarians, as shown by their pioneering work in statutory consolidation and early flirtations with codification, should at this point abandon Lord Brougham. A contextual inconsistency, not a strictly propositional one as explicated by Lord Radcliffe, should be necessary and sufficient to exclude the number (and gender) presumptions.

When discussing the application of the interpretation legislation, Maxwell[24] and Pearce[25] quote different passages from the opinion of Lord Pearce for the Judicial Committee in *Sin Poh Amalgamated*

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[20] The result was to allow hotel keepers, pursuant to the Licensing Acts, to set aside any number of rooms in which lodgers could "treat" their guests to liquor—not one room only, as a literal reading and some policy considerations suggested.

[21] [1963] Tas. S.R. 41.

[22] [1962] A.C. 515 (on appeal from the Supreme Court of Ceylon).

[23] *Id.* 527.

[24] Maxwell, *Interpretation of Statutes* (12th ed. 1969) 306.

[25] Pearce, *Statutory Interpretation in Australia* (1974) para. 127.

(H.K.) Ltd v. *Attorney-General of Hong Kong*,[26] a case referred to with approval by the Board in the Australian appeal, *Blue Metal Industries Ltd* v. *Dilley*.[27] Maxwell's quote is: "To discover whether a contrary intention is implied one must . . . look, not at the form of the particular expressions, but at the substance and tenor of the legislation as a whole".[28] Pearce quotes: "The Interpretation Ordinance was intended to avoid muliplicity of verbiage and to make the plural cover the singular except in such cases as one finds in the context of the legislation reason to suppose that the legislature, if offered such an amendment to the bill, would have rejected it".[29] Pearce justly observes that such statements are subjective, and tend to restate the problem rather than solve it.[30] Neither he nor Maxwell is prepared to extract any more specific guides from the small wilderness of cases on the subject. I agree that the situation is bound to remain open-ended and that many of the cases are unclassifiable under sub-principles. Nevertheless, a perusal of 22 reported decisions in England and Australia, in 13 of which the interpretation presumption was applied,[31] in 8 of which it was not,[32] and in 1 of which the presumption was applied to one clause of a statutory Order and not to another clause of that Order,[33] does suggest to me two sub-principles of a more specific and operable character.

First, the presumption in favour of applying the interpretation Act presumption is strong. So far as one can speak of an onus of persuasion in matters of law, equivalent to the onus of proof in matters of fact, that onus is on the party seeking to displace the statutory presumption. This follows from the passage in *Sin Poh Amalgamated* quoted by Mr Pearce,[34] and by Lowe J. in *Healey* v. *Hambrook*.[35] Another form

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[26] [1965] 1 W.L.R. 62.
[27] (1969) 117 C.L.R. 651.
[28] Maxwell, *op. cit.*, 227-228.
[29] *Id.* 228.
[30] Pearce, *op. cit.*, para. 127.
[31] *Re Clayton's Settled Estates* [1926] Ch. 279; *Fell* v. *Derby Leather Co. Ltd* [1931] 2 Ch. 252; *Re Earl of Feversham's Contract* [1942] Ch. 33; *Potts* v. *Reid* [1943] A.C. 1; *Baker* v. *Lewis* [1947] K.B. 186; *Mason* v. *Teitler* [1956] V.L.R. 90; *Healey* v. *Hambrook* [1958] V.R. 232; *Jarvis Motors (Harrow) Ltd* v. *Carabott* [1964] 1 W.L.R. 1101; *Sin Poh Amalgamated (H.K.) Ltd* v. *Attorney-General of Hong Kong* [1965] 1 W.L.R. 62; *Page* v. *Williams* [1965] 1 W.L.R. 16; *Jacobs* v. *Chaudhuri* [1968] 2 Q.B. 470; *The Queen of the South* [1968] P. 449; *Annicola Investments Ltd* v. *Minister of Housing and Local Government* [1968] 1 Q.B. 631.
[32] *Re England* (1892) 13 N.S.W.L.R. (L) 121; *R.* v. *National Arbitration Tribunal; ex parte South Shields Corporation* [1952] 1 K.B. 46; *Mackay* v. *Kontos; ex parte Mackay* [1951] Q.S.R. 37; *Porter* v. *Bryant* [1963] Tas. S.R. 41; *Dealex Properties Ltd* v. *Brooks* [1966] 1 Q.B. 542; *Bond* v. *Hale* (1969) 72 S.R. (N.S.W.) 201; *Burns* v. *Paterson* (1969) 90 W.N. (Pt. 1) (N.S.W.) 560; *Blue Metal Industries* v. *Dilley* (1969) 117 C.L.R. 651.
[33] *R.* v. *Industrial Disputes Tribunal; ex parte Queen Mary College, University of London* [1957] 2 Q.B. 483.
[34] Pearce, *op. cit.*, para. 127.
[35] [1958] V.R. 232, 234.

of this proposition is the Privy Council's statement in *Blue Metal Industries Ltd* v. *Dilley* that "the mere fact that the reading of the words in a section suggests an emphasis on singularity as opposed to plurality is not enough to exclude plurality".[36] As Mr Pearce observes,[37] the Courts should keep in mind the likelihood that modern statutes are drafted by trained draftsmen who work on the assumption that the relevant interpretation Act will be applied. He speaks as a former draftsman.

Secondly, the only generally applicable and readily applied ground for refusing to apply the legislative presumption is an *operative practical* difficulty or absurdity which would result from doing so. This is most readily shown in the case of laws which if read "plurally" would require a good deal of interaction between persons, whether private citizens or officials or both. It is to be presumed that the legislature will provide powers of decision, of settling differences of opinion, and of solving machinery questions such as issuing, authentication and service of documents where action in concert is required. If no such powers or techniques are provided, and a "singular" interpretation is available and would avoid them, then that interpretation is preferred. A convenient method of testing the matter, adopted by Lord Pearce in *Sin Poh Amalgamated*, is to write out the provision in question expanded in the manner required by the relevant interpretation provision—in that case reading "Commissioners", the word in dispute, as "Commissioners or Commissioner"[38]—and examine the practical consequences as indicated above. If operative problems arise from the expanded reading for which the Act provides no ready solution, then that reading should be rejected.

This operative test was illustrated by *Blue Metal Industries*,[39] where the Privy Council held (affirming the Supreme Court of New South Wales and the High Court) that sections 184 and 185 of the Companies Act 1961-1964 (N.S.W.) expressed in the singular, could not be read plurally so as to allow two companies acting jointly to take over a third company under those provisions. The High Court joint opinion by Barwick C.J. expresses better than the Privy Council opinion the operative difficulties which the "plural" reading would have caused in relation to the handling of a dissentient minority of shareholders in the company to be taken over; both in the procedure for service of notices and in the settling of substantive rights the participation of more than one take-over company at a time in the proceedings (and in all such cases one has to consider—"if two, why

[36] (1969) 117 C.L.R. 651, 656.

[37] Pearce, *op. cit.*, para. 127.

[38] The Ordinance provided for the appointment of "Commissioners" to make enquiries; a single commissioner had been appointed and this was challenged.

[39] (1969) 117 C.L.R. 651.

not two hundred?")[40] would have necessitated unanimity of action, agency arrangements, agreement on which take-over company and take-over-company subsidiary company shares might be offered, and other such matters, all capable of settlement by agreement but all requiring machinery for decision, in the absence of agreement, which the Act did not provide. I offer yet another quote from *Sin Poh Amalgamated*, a passage from the judgment below adopted by Lord Pearce: "if there is some substantive provision, essential to the functioning of the commission, which could not be satisfied without a plurality, that would be a very different matter, e.g. a provision that a commission should not sit to hear witnesses unless at least two commissioners were present".[41] Such practical difficulties in reading singular expressions as including the plural arose in *Re England, Dealex Properties Ltd* v. *Brooks, Bond* v. *Hale* and *Burns* v. *Patterson*.[42]

Since *Sin Poh Amalgamated* has received so much approval, I advance with hesitation a criticism of one aspect of that decision. The most convincing operational reason advanced for refusing to read "Commissioners" as including "Commissioner" was a provision requiring a summons to attend *etc.* to be issued by the "chairman or presiding member". Lord Pearce said that, applying the Interpretation Ordinance, one needed only to read this as "chairman or presiding member or sole commissioner". With respect, this seems a more drastic reconstruction than such interpretation provisions readily cover. What is the word in the plural *in the particular section* for which the suggested replacement is made? The two relevant expressions—chairman and presiding member—are already in the singular. The reading of singulars as plural and vice-versa will usually involve consequential reconstructions in verbs and adjectives in order to reach a grammatical result—"are" for "is" and so on—but there must be limits to the degree of reconstruction which a mere interpretation rule will permit. What Lord Pearce did here was to introduce a new expression altogether in order to carry through the quite unobjectionable initial operation on the appointing section—reading "commissioners" as "commissioners or sole commissioner". Moreover, this was an unnecessary step to take. It was not necessary to reject, as Lord Pearce did, the argument that "chairman or presiding member" could by itself satisfy the machinery provision. As to "chairman"—yes, this word necessarily implies a tribunal of more than one member. But "presiding member" does not necessarily imply a relation to colleagues; it implies a relation to the suitors, witnesses, counsel, watching public *etc.* which is fully satisfied by a single member, without re-expression, and

[40] A question posed, *arguendo*, in *Re England* (1892) 13 N.S.W.L.R. (L) 121, 122.

[41] [1965] 1 W.L.R. 62, 66.

[42] All cited in n. 32.

that is the relationship covered by the machinery section. Hence the result remains valid although the reasoning is open to criticism.

Section 57 of the Constitution of the Commonwealth of Australia is as follows:

> If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously. But such dissolution shall not take place within six months before the date of the expiry of the House of Representatives by effluxion of time.
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> If after such dissolution the House of Representatives again passes the proposed law, with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may convene a joint sitting of the members of the Senate and of the House of Representatives.
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> The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the House of Representatives, and upon amendments, if any, which have been made therein by one House and not agreed to by the other, and any such amendments which are affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives shall be taken to have been carried, and if the proposed law, with the amendments, if any, so carried is affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives, it shall be taken to have been duly passed by both Houses of the Parliament, and shall be presented to the Governor-General for the Queen's assent.

In *Cormack* v. *Cope*,[43] the High Court held that at a joint sitting held under the second and third paragraphs of the section, any number of "proposed laws" which had satisfied the requirements of the first paragraph before a double dissolution carried out under that paragraph occurred might be passed into law. However, in coming to that conclusion the majority[44] thought there was no need to rely upon a

[43] (1974) 131 C.L.R. 432.

[44] McTiernan J. dissented on a ground which excused him from considering the present issue.

verbal operation pursuant to the provisions of section 1 of the Interpretation Act 1889 (U.K.). It is suggested, with respect, that such an operation would have provided a neater and clearer solution, and that the grounds given by the Court are far from clear. Gibbs[45] and Menzies[46] JJ. seem to have relied partly on the expression "any proposed law" in the first sentence as carrying an implication of plurality into the four subsequent uses of the presumptively singular expression "the proposed law", and the five presumptively singular occurrences of the word "it" referring to that law. However, although "any" has many meanings, its most probable meaning here is not "any number of proposed laws", but "a proposed law on any subject within Commonwealth competence"; the section follows three sections dealing with financial measures and a fourth much concerned with such measures, so that it was natural for the draftsman to emphasize that in section 57 he was dealing with the full range of federal legislative power. The observations of Barwick C.J., Stephen and Mason JJ. beg the question by assuming that even without the Interpretation Act the onus of persuasion is on the party wishing to show that something in the third paragraph of the section prevents the consideration of more than one Bill. However, as Barwick C.J. concedes at the outset, the problem only arises because the language, in particular the third paragraph, conveys a strong prima facie impression that the draftsman had in mind a single Bill as going through the stages in question. The case was hurriedly argued and decided, on an interlocutory proceeding for an injunction to restrain the holding of the projected joint sitting. Much of the argument and decision was directed to the questions whether the Governor-General was the authority to decide conclusively the satisfaction of the conditions in the third paragraph, and whether when convening a joint sitting he could specify the Bills to be considered so as to restrict the sitting to those Bills, or had invalidly convened because he purported to specify the business of the sitting. In the course of dealing with these questions, the Court developed a view of the first paragraph which made the question of one or many Bills irrelevant so far as that stage of the proceedings is concerned. The view is that the Governor-General has no authority to determine whether the conditions of the paragraph have been satisfied, except in the sense that any administrative officer has to make a preliminary decision that the conditions for an exercise of power have occurred or arisen. Hence it did not matter how many Bills had in fact satisfied the conditions for an exercise of the paragraph; one was enough, and more only served to reassure the Governor-General that if some ultimately were held not to satisfy the paragraph (as happened with one

[45] (1974) 131 C.L.R. 432, 468.
[46] *Id.* 463-464.

of the six Bills in this episode),[47] the dissolution would be valid and a joint meeting could ensue. This mode of thinking, however, then distracted attention from the independent problem posed by the second and third paragraphs, where the specific language of the provision becomes all-important.

If, however, the references to "a proposed law" are read as including the plural, in accordance with the strong presumption in favour of doing so, then it only remains to consider the possible countervailing considerations. There is no operative or machinery difficulty; the difference between one or several Bills involves only a quantitative difference in the task of the joint session. The policy considerations are equivocal. To some extent, the section is intended to protect the Senate, and the "singular" reading would advance that purpose; to some extent it is intended to strengthen the Representatives by creating the possibility of a Representatives majority overriding a Senate majority, and this purpose would be strengthened by the plural reading; to some extent, it is to strengthen the parliamentary institution as a whole by creating the possibility of ending a deadlock situation, and this too is strengthened by the plural view. Hence there is nothing to displace the plural presumption.

However, while the question of the number of Bills which can go to a joint sitting is thus easily solved, there are further problems in the working of section 57 which the Court did not have to solve. Can the Governor-General convene a succession of joint meetings in order to deal with a plurality of Bills which have been through the stages required by section 57? Where a Bill has satisfied the requirements of the first paragraph, and a dissolution occurs but no joint session, can a further double dissolution be proclaimed on the basis of the disagreement over that Bill? What if there have been disagreements satisfying section 57 in respect of several Bills, and a double dissolution purporting to be grounded on one of them? What if joint meetings do ensue, and the single Bill or the several Bills or some of them are not passed? These questions do not exhaust the possibilities, though in practice one would not expect many such puzzles to occur.

On the first point, the language of the section and the references to joint sittings in *Cormack* v. *Cope* rather suggest that a single joint sitting is intended. A "sitting" does appear to be a single episode, beginning with a formal opening such as prayers and ending with a motion for adjournment to the "next day of sitting", although a sitting need not be confined to a day and sittings have extended to more than 48 hours.[48] In terms of the Interpretation Act 1889 (U.K.),

[47] *Victoria* v. *Commonwealth* (the *Petroleum and Minerals Authority* case) (1975) 50 A.L.J.R. 7.

[48] May, *Parliamentary Practice* (19th ed., 1976) 294; House of Representatives *Standing Orders* Ch. VI.

it should be observed that the first stage of the problem is not the sitting but its convening. The expression "the Governor-General may convene" is not in a form capable of simple plural expression. However, the power to convene follows a course of passings and rejections after the double-dissolution election which can occur seriatim in relation to a series of Bills, and so is in a proper sense of the expression "distributable", and hence there seems no reason why a separate joint session should not be convened immediately after each Bill goes through the process required by the second paragraph. Alternately or perhaps in addition, there seems neither operative nor policy objection to reading "joint sitting" under the Interpretation Act 1889 (U.K.) as including the plural, so that a single convening could require a number of joint sittings or perhaps so many as the members present determine are needed to deal with the Bills in question. If the Australian Labor Party had won the general election of December 1975 and the 21 Bills in respect of which that double dissolution was held had been brought to a joint sitting, such questions might have arisen. The path of prudence, as in 1974, would have been to put all the Bills through the process required by the second paragraph of section 57, and then convene a single joint sitting and continue it with "suspensions" of the sitting as the needs of food and sleep required until all had been dealt with.

The questions as to the survival of "deadlocked Bills" after an initial dissolution, with or without joint sitting, as occasion for further dissolution and possible joint sitting, cannot be answered by reference to the Interpretation Act. A literal application of the predominant reasoning in *Cormack* v. *Cope* and *Western Australia* v. *Commonwealth* (the *Territories Senate Representation* case)[49] may suggest that there is no time limit to the availability of deadlock situations as justification for double dissolution and hence also joint sitting. Indeed, in the latter case Jacobs J. said:[50] "a deadlock on a proposed law is never stale", and a majority (Barwick C.J. dissenting) agreed that there was no ground for implying any time limit on the availability of circumstances satisfying the first paragraph of section 57 as ground for double dissolution. However, Stephen J. in the *Territories Senate Representation* case said: "No doubt one other quite obvious limit having some temporal consequences also exists; the power cannot be used to dissolve any Parliament other than the very Parliament in the course of whose life there has occurred the legislative deadlock which the section is designed to resolve".[51] Unfortunately His Honour did not explain why this was so obvious, and no other Justice mentioned the point. It may be doubted whether under the Australian system there is

[49] (1975) 50 A.L.J.R. 68.
[50] *Id.* 96.
[51] *Id.* 86.

such a thing as "a Parliament", notwithstanding the practice of numbering Parliaments; the latter practice depends on the terms of the House of Representatives, not of the institution as a whole.[52] The dissenting view of Barwick C.J. in that case, confining the power in section 57 to a "current situation", would give some support to the Stephen view; Gibbs J. also refers to the power being exerciseable "at any time during the life of the Parliament",[53] but not in a context suggesting any definite approval of the dictum of Stephen J., nor giving any definition of "a Parliament". Indeed, that view can be supported only by a piece of judicial legislation which would rest on a thoroughly rational view of the section 57 procedure, but not one which the draftsmen showed any sign of expressing. It is that once a disagreement or series of disagreements satisfying the requirements of section 57 has occurred, and a double dissolution has been proclaimed and election held, the disagreements should be regarded as merged in the verdict of the electors, and wiped out for any further operational purpose under section 57. Otherwise a government returned to power in the Representatives but denied a Senate majority could immediately seek a fresh verdict of the people on both Houses, and keep on doing so as necessary, without the need to go through any fresh set of time-consuming steps under the first paragraph of section 57—indeed a triumph not of, but over, the people.[54]

[52] Perhaps better constitutional sense could be made of the practice and of Stephen J.'s observation, if "a Parliament" in this context meant the sittings between the election for all members of both Houses at a time and another, *i.e.* from 1901 to 1976 there have been *four* completed Parliaments and we are now on a fifth. Perhaps the Stephen dictum should be expressed by reference to the House of Representatives alone; the dissolution of that House puts an end to s. 57 possibilities predating the dissolution. But if so stated it is even less obviously sound.

[53] (1976) 50 A.L.J.R. 68, 80.

[54] Neither the Barwick "currency of the situation" view (*id.* 73) nor the Stephen view that the Governor-General must act for the purpose of dealing with the "deadlocked" laws (*id.* 90) would necessarily solve this problem. The deadlock may remain current, and the purpose of dealing with it operative, through several double dissolutions.